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ENVIRONMENTAL IMPACT STATEMENT GUIDELINES. GUIDELINES FOR PREPARATION OF ENVIRONMENTAL STATEMENTS FOR REVIEWING AND COMMENTING ON ENVIRONMENTAL STATEMENTS PREPARED BY OTHER FEDERAL AGENCIES

Environmental Protection Agency
Seattle, Washington

April 1973

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ENVIRONMENTAL PROTECTION AGENCY

REGION X

SEATTLE WASHINGTON

Guidelines for Preparation of Environmental Statements

for

Reviewing and Commenting on Environmental Statements Prepared by Other Federal Agencies

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Springfield VA 22151

APRIL 1973

REGION X-1

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

April 15, 1973

REPLY TO ATTN OF: 10A

MEMORANDUM

TO : Agencies Requesting Environmental Protection Agency Review of Environmental Impact Statements

FROM : Regional Administrator, Region X

SUBJECT: Environmental Impact Statements - Regional Guidelines

In June, 1971, Region X of the U. S. Environmental Protection Agency issued Interim Guidelines for the kinds of things we will be looking for in the agency Environmental Impact Statements. During the past few months, we have been asked by many of the Federal and State agencies in this region to revise the guidelines. In response to this request, we have updated our guidelines.

The U. S. Environmental Protection Agency Headquarters will be preparing broader and more comprehensive guidelines in the near future.

We would like to receive your comments and suggestions on how these guidelines can be strengthened. Please send your comments and requests for copies of these guidelines to:

Mr. Hurlon C. Ray
Assistant Regional Administrator for
Management
U. S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

Telephone: (206) 442-1233

Thanks.

James L. Agee

James L. Agee

Enclosure

CONTENTS

Page

INTRODUCTION 1

SECTION I National Environmental Policy Act 7

SECTION II Content of Environmental Impact Statements 15

SECTION III General Guidelines 21

SECTION IV Guidelines for Specific Projects 35

- A. Highway Projects 35
- B. Dredging and Spoil Disposal 51
- C. Land Management 61
- D. Airports 75
- E. Water Resource Development 83
- F. Comprehensive Planning 99
- G. Radiation 103
- H. Pesticide Projects 109

SECTION V Regional Review Procedures 117

SECTION VI Attachments 123

- A. Clean Air Amendments of 1970, Public Law 91-604
- B. Public Law 91-258, Air and Water Quality
- C. Council on Environmental Quality Guidelines
- D. CEQ Memorandum to Federal Agencies on Procedures for Improving Environmental Impact Statements
- E. OMB Memorandum--State and Local Agency Review of Impact Statements
- F. Omb Circular No. A-95
- G. Executive Order 11507--Prevention, Control, and Abatement of Air and Water Pollution at Federal Facilities
- H. Executive Order 11514--Protection and Enhancement of Environmental Quality
- I. Executive Order 11296--Evaluation of Flood Hazard in Locating Federally Owned or Financed Buildings, Roads, and Other Facilities, and in Disposing of Federal Lands and Properties
- J. NEPA and the Courts

INTRODUCTION

Region X of the U.S. Environmental Protection Agency (EPA) has objectives to assist other government agencies in developing an environmental ethic for their planning and action programs and to assure that environmental values receive equal consideration with economics and need in the Federal decision making process. A principal means to accomplish these objectives is to call attention to environmental relationships which may not have been given adequate considerations during initial planning. The vehicle for such comments is the Environmental Impact Statement (EIS) review. Environmental issues must certainly be approached and considered in the early planning stages of a project, not when a situation develops that hits toward a "boiling point."

In June, 1971, Region X issued interim guidelines to illustrate the types of information that would be looked for in an environmental impact statement. In the two years since the guidelines were issued, Region X has reviewed hundreds of impact statements that have been prepared by Federal agencies within the region to comply with the National Environmental Policy Act of 1969 (NEPA). In an effort to assist Federal agencies in meeting the requirements of NEPA, we at the EPA Region X office have conducted and participated in a number of workshops and training sessions in cooperation with the U.S. Civil Service Commission and with colleges and universities within the region. As a result of our experiences, we have revised and updated the Environmental Impact Statement Guidelines to further assist those engaged in the preparation of impact statements. These guidelines insure that we consider the most important ecological principles when evaluating possible courses of action or inaction.

We have heard demands to amend NEPA and we have seen proposed new legislation. Our experiences with NEPA have been numerous but nevertheless, NEPA is working in the Northwest. It is proving to be an effective and reasonable way to curb pollution and disruption of our environment. Many Federal and State agencies have reassessed their activities and planning programs in accordance with NEPA directives. Some problems have been eliminated and some are nearly overcome. Although the Environmental Impact Statement requirement is still young, it is yet the most wide-ranging and comprehensive pollution control program authorized by Congress. It is a powerful and costly process which must be protected and judiciously used to insure environmental clean-up and proper land use planning.

The best insurance for maintaining momentum and public confidence in NEPA is to continue to develop and enforce the Act while using judgment in its application. NEPA will continue to be strengthened with each new action initiated by citizen organizations. The courts are involved to a greater degree each day in the interpretation of the Act. It seems safe to assume that judicial actions will play a major role in shaping the future application of NEPA. NEPA has vanguarded new values in the Northwest; values which give priority to quality of life and long-term ecosystem stability. Compliance demands basic changes in societal standards, attitudes and actions that have tended to assume that profit, economic growth, and technological expansions are always good, even at the expense of environmental quality of life. There are ethical and aesthetic premises that equal, if not transcend, economics. Our attention is called to values which base our lives in harmony and balance with the earth, and the future of life, on the highest ecological concepts. Ecosystem stability depends on heterogeneity. Any action that makes things uniform tends to threaten future balances. NEPA has been instrumental in bringing to public awareness the complexity of the pattern of relations between people and their environment.

We must protect and preserve generally prevailing good water and air quality. We cannot develop projects in the Northwest haphazardly and without regard to the consequences. We must acknowledge the necessity and the value of leaving some ecological systems undisturbed. A habitat, once destroyed, is gone forever. We must concern ourselves with the prevention of ecological disasters so that costly clean-up will not be necessary. The work cut out for us in the Northwest requires solutions from government, labor and industry. Political friction, profit motives, and arbitrary mandates make the job more difficult. Experience has shown that unwise projects impose heavy costs and inflict damage to the environment and to the quality of life. We have neglected the warnings too long, and now we have begun to pay the high price of corrective action.

Environmental concern is not a passing national fancy. NEPA has set in motion events that will have a long-term impact on our environment. Environmental problems have taken on the national agenda alongside traditional concerns of social justice and quantitative prosperity. The American people want to safeguard the national heritage and restore an ecological balance jeopardized by imprudence. It is being acknowledged that the science of ecology must be utilized immediately and with care for far reaching, permanent and profound results. For engineering expertise to be the means for developing a quality life is a massive challenge. It is a challenge worthy of the highest dedication, and it is a challenge which must be met if we are to secure a liveable world for ourselves and for future life. The success of NEPA requires full exposure, public involvement, conviction, coordination, integrity, participation, and partnership: no silent partners, no secrets, no deals. Each of us must participate in these areas of joint concern with our fullest capabilities if we are to stop pollution and exploitation.

Carefully planned and prepared Environmental Impact Statements must be the unvarying rule if we are to protect the environment.

The cornerstone of these objectives is a cogent guideline which should be followed during the preparation and review of Environmental Impact Statements.

The EIS review in Region X is designed to minimize the possibility of damage to the environment. For this reason, we use a multiple-disciplinary review system for each of the impact statements submitted to the regional office for review. Chart No. 1 illustrates the Region X system for review of draft statements and notes the various EPA disciplines involved in the preparation of our own impact statements. Impact statements are examined by specialists with expertise in air quality, water quality, engineering, biology, land use management, noise abatement, solid waste disposal, pesticides, economics and radiation health. Each person with an interest in the proposal has an opportunity to comment. The EIS program staff will incorporate the various comments into a response from the Region X Environmental Protection Agency. These EPA responses are available to all agencies and to the public.

We ask that Federal, State, County and City administrators and planners alert themselves to the times and accept the role of stewardship for our natural and social resources. Today, and what we do today, constrains what we can and cannot do tomorrow and determines what tomorrow will be like. These guidelines insist on a projection of consequences in the future. Both spirit and performance must be attuned to the National Environmental Policy

Act. For institutions to be effective, they must respond to the challenges confronting them. They must do the job that is expected by the people and necessary to the environment. The task is important. It is certainly a task that reflects one of the great social concerns of our time. The _Guidelines_ are dedicated to these objectives.

NATIONAL ENVIRONMENTAL POLICY ACT

SECTION I

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Public Law 91-190
91st Congress, S. 1075
January 1, 1970

An Act

83 STAT. 852

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969".

National Environmental Policy Act of 1969.

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

Policies and goals.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Administration.

SEC. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Copies of statements, etc.; availability.

81 Stat. 54.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by title II of this Act.

Review.

SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

SEC. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Report to Congress.

SEC. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Council on Environmental Quality.

SEC. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds: to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

SEC. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof). 80 Stat. 416.

Duties and functions.

SEC. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

SEC. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and 34 F. R. 8693.

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Tenure and compensation.
80 Stat. 460, 461.

81 Stat. 638.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 U.S.C. 5315).

Appropriations.

Sec. 207. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

Approved January 1, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-378, 91-378, pt. 2, accompanying H. R. 12549 (Comm. on Merchant Marine & Fisheries) and 91-765 (Comm. of Conference).
SENATE REPORT No. 91-296 (Comm. on Interior & Insular Affairs).
CONGRESSIONAL RECORD, Vol. 115 (1969):
July 10: Considered and passed Senate.
Sept. 23: Considered and passed House, amended, in lieu of H. R. 12549.
Oct. 8: Senate disagreed to House amendments; agreed to conference.
Dec. 20: Senate agreed to conference report.
Dec. 22: House agreed to conference report.

GPO 37-139

CONTENT OF ENVIRONMENTAL STATEMENTS*

SECTION II

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* The following section "Content of Environmental Statements" is a Regional interpretation of Section 102(2)(c) of the National Environmental Policy Act. It must be realized that this interpretation and these guidelines do not constitute EPA policy, nor are they requirements under the National Environmental Policy Act. They are based solely on the experience of EPA's Region X.

CONTENT OF ENVIRONMENTAL STATEMENTS

(Referring to Section 102 (2)(c) of PL-91-190)

Point (1) requires a description of primary and secondary impact on the environment including impacts on aesthetics, and aquatic and terrestrial ecosystems.

This requires a detailed description of the proposed action. It must include specifics of area involved, resources involved, what physical changes are proposed, what ecological systems will be altered and in what time frame these changes will occur. For example, a proposal for a reservoir project, power plant, or other facility, must include quantities of water stored, amounts and schedules of releases, changes in water quality including temperature, aquatic resources affected, tail water fluctuations, diversion points and amounts, quality of return flows if irrigation uses are involved, any exchange-of-flow arrangements, resource losses in reservoir area, and any other physical change which will have a significant impact. If a hydroelectric plant is to be constructed by a public utility company subject to license by the Federal government then information on such a facility should be included in the description.

This section also requires a description of the environmental interrelationship in the direct project area and the total affected area -- however extensive it may be. A major action, such as a storage reservoir, a pipeline, mining or logging operation, road construction, and recreation development or navigation works may not only affect air, soil, vegetation, and water quality in the immediate project area but may also be the inducement needed for industrial, recreational, or agricultural development with attendant environmental impacts.

Point (2) requires a description of any probable impact on the environment, including impact on ecological systems such as wildlife, fish, and marine life.

The CEQ Guidelines state that significant actions include those which may have both beneficial and detrimental effects "even if, on the balance, the agency believes that the effect will be beneficial." Therefore, the agencies proposing action must consider and report all *alterations* to existing conditions whether or not they are deemed beneficial or detrimental. Since the Environmental Protection Agency is directly responsible for reviewing and commenting on air and water quality, solid wastes management, pesticides, noise, and radiation, the statements must include the anticipated changes in environmental quality in terms of the parameters commonly used to evaluate each of these areas.

Point (3) requires the responsible agency to study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. Sufficient analysis of such alternatives and their costs and impact on the environment should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might have less detrimental effects.

This requires not only complete alternatives which would accomplish the objective with less impact, but also non-structural alternatives and those that include elimination of certain "high environmental impact" aspects of the proposed action. Most actions involve a number of potential areas where an imaginative approach could lessen adverse environmental impacts while still meeting a majority of the projected needs. An environmental statement should describe these alternatives in such a manner that reviewers can independently judge if the environmental impact results from trying to gain maximum economic return or are inherent to the whole project.

Point (4) requires an assessment of the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term environmental productivity. The agency is required to assess their proposed action for cumulative and long-term effects on the environment.

The project or action must be evaluated in terms of use of renewable and non-renewable resources. In effect, the proposing agency must show who is paying the "environmental cost," the people who presently gain the benefits or future generations who may only be left with the cost. Most significant resource based actions have a long-term effect since there is a foreclosure of choices for future generations. For example, filling estuaries may provide additional land space for development but foreclose future choice of use and eventually impair the ability of the estuaries to support its normal biota.

Point (5) requires description of any irreversible and irretrievable commitment of resources.

For example, construction of a storage reservoir, filling or dredging of estuaries, construction of highways and pipelines are, for practical purposes, irretrievable commitments since such actions generally commit future generations to continue similar use. Also, appropriation of water through water rights, channel aligning, construction of major industrial operations, all are basically irreversible since the cost is such that removal is unlikely. Irreversible damage can also result from accidents such as oil spills. The risk of such occurrences should be discussed.

Point (6). The Council on Environmental Quality Guidelines include a Point 6 indicating, where appropriate, a discussion of problems and objections raised by local entities in the review process should be included.

The purpose of this is twofold. It encourages the proposing agency to contact and communicate with these groups and it provides reviewers a reference to groups who may have personal knowledge of the impact of the proposal.

GENERAL GUIDELINES

SECTION III

The following are general comments directed toward EPA's six legislated areas of expertise. These are to be used in conjunction with the comments on specific types of Federal actions (Sect. IV) to stimulate environmental awareness and to aid in assessment of the broad range of impacts. These comments are not to be used as a checklist; they are only designed as guidelines. We have not included a separate section specifically devoted to adverse impacts, but rather have used a broad category to cover all types and severity of environmental impacts. The reason for this approach is that we feel NEPA intended the impact statement to provide enough information that adverse impacts will be clearly evident. This does not mean that adverse impacts should not be identified as such, but rather that all impacts should be presented in sufficient detail to allow the reviewer to independently determine the severity of these impacts.

A. Water Quality

1. The Federal Water Pollution Control Act of 1967, as amended, requires the individual states to set water quality standards to protect the beneficial uses of water. After being proposed by the states, these standards were submitted to the Department of Interior for approval. Standards generally take the form of regulations which set required levels of certain water quality criteria such as dissolved oxygen, total coliform

organisms, temperature, and other parameters. The water quality standards of each state are promulgated and available from that state. The 1972 amendments to the Federal Water Pollution Act require the states to examine their water quality standards by April 18, 1973 and to revise them as necessary.

2. For the reviewer to assess the effects of a project on the water quality, the impact statement should include detailed information on the present biological, chemical, and hydrologic characteristics of the water body.

a. Biological factors include flora and fauna that exist in or are dependent on the water body. The objective is to relate the water body to the local environment and to depict its importance in the ecosystem of the project area.

b. Chemical parameters of interest include the criteria included in the state water quality standards as well as any other parameters which may be of significance in assessing the project's impacts on water. This is important since it is often the changes in micronutrients or other factors which affect biological growth which can significantly affect the water quality of the stream after construction of the project.

c. Hydrologic characteristics include such information as high and low streamflows, occurrence of floods, flood plain characteristics, groundwater flows, tributaries, natural drainage channels, and alterations to natural hydrologic conditions which will result from the project's construction and operation.

3. The statement should provide detailed information on the expected effects of the project on water quality, in terms of the physical, chemical, and biological changes which will occur due to the project.

4. The statement should assess the impacts of the project on water quality, in terms of applicable state water quality criteria, and should present sufficient information to allow the reviewer to decide whether any of these impacts can be considered adverse. Specific impacts to the identified beneficial uses of water, such as swimming, fish propagation, and water supply, should be stated.

5. If the project's construction or operation will result in conditions which violate applicable water quality standards, these conditions should be spelled out in detail and should be analyzed in terms of the reason for their occurrence and possible methods to mitigate potential adverse effects of such violations.

6. Water quality should also be related in the statement to the existing ecosystems and the changes which will occur as a result of the project.

7. If the proposed action will affect drinking water supply, the impact statement should so state. U.S. Public Health Service Drinking Water Standards which apply to the water supply should be stated and compared to water quality resulting under post-project conditions.

B. Air Quality

1. What are the types and quantities of air pollutants that will be emitted as a result of the proposed action or alternatives to the proposed action? Inventories of pollutant emissions should be as detailed as possible including the point of pollutant discharge into the ambient air and stack parameters and concentrations if applicable.

2. Will the proposed action or alternatives to the proposed action result either directly (primary impact) or indirectly (secondary impact) in air pollutant concentrations exceeding national ambient air quality standards promulgated by the Administrator of the Environmental Protection Agency pursuant to Section 109 of the 1970 amendments to the Clean Air Act? Present standards are published in the April 30, 1971, issue of the Federal Register, pages 8186-8201. The procedures used for forecasting ambient pollutant concentrations should be described in detail.

3. Will the proposed action or alternatives to the proposed action result either directly or indirectly in air pollutant concentrations exceeding State or local ambient air quality standards which are more stringent than Federal standards or which are for pollutants for which Federal standards have not been established? As in 2., the procedures used for forecasting ambient pollutant concentrations should be fully described.

4. Is the proposed action consistent with air quality management measures included in State-adopted plans for achieving and maintaining national ambient air quality standards? Plans for the four States within Region X are available for review at the EPA Regional Office or at the office of the relevant State agencies:

Alaska -- Department of Environmental Conservation
Idaho -- Department of Environmental Protection and Health
Oregon -- Department of Environmental Quality
Washington -- Department of Ecology

5. Will the proposed action or alternatives to the proposed action result in the violation of State and/or local air pollution control emission regulations?

6. Is the proposed action in conformance with applicable Federal standards of performance for new stationary sources, as defined by Section 111 of the 1970 amendments to the Clean Air Act? Federal new source performance standards for steam generators, portland cement plants, sulfuric acid plants, nitric acid plants and municipal incinerators are published in the December 23, 1971, issue of the Federal Register, pages 24876-24895. EPA expects to promulgate during 1973 new source performance standards for other emission source categories.

7. Is the proposed action in conformance with applicable Federal emission standards for hazardous air pollutants, as defined in Section 112 of the 1970 amendments to the Clean Air Act?

EPA expects to adopt standards for asbestos, beryllium, and mercury during 1973.

8. Does the alternative action selected for implementation minimize the extent of degradation of ambient air quality?

9. What consultation with State or local air pollution control agencies has occurred during planning of the proposed action and during preparation of the impact statement? If these agencies prepared written comments on the proposed action, these comments should be submitted as part of the impact statement.

C. Noise

The Noise Control Act of 1972 requires the EPA to prepare a criteria document regarding the effects of noise by August 1973 and to publish information on the levels of noise necessary to protect the public health by November 1973. The Act also requires EPA to set standards for several classes of equipment such as motor vehicles and construction equipment. Both the documents and the standards may lead to changes in these guidelines.

1. The following information is needed to evaluate the noise impact of the proposed action and the alternatives:

a. The existing and anticipated land uses near the project site or route that have a sensitivity to noise. (Particularly facilities in which speech or sleep occurs such as residences, motels, hotels, hospitals, schools, as well as recreational areas such as parks, campgrounds, nature preserves). What is the zoning and what does the comprehensive plan anticipate as the land use for undeveloped areas?

b. The existing noise levels adjacent to the project site or route. Sites should be selected both for their proximity to the projected noise source as well as for their noise sensitivity. L_{10}, L_{50} and L_{90} levels should be given in dbA units as well as the noise characteristics at the identified test sites. If the noise contains strong low frequency components, dbC scale measurements should also be made. Where necessary strong pure-tone components should be identified through full or one-third octave band measurements. The levels need not be presented as noise level contours. Methodology for determining these levels and qualifications of the investigator should be indicated.

c. The noise levels anticipated in these areas emanating from a completed project. L_{10}, L_{50} and L_{90} levels in dbA and/or dbC units should be documented for the same test sites at which existing levels were measured. (Peak noise levels should be determined because of their importance for sleep interference.) One statistical level should be presented as noise level contours. Methodology (noise prediction model) for determining these levels should be indicated, as well as experimental verification of the accuracy of the noise prediction model. Estimates of the maximum noise at nearest sensitive uses for each kind of construction equipment to be used should be stated. The numbers of each type of equipment should also be given.

d. The criteria used to determine the impact of the predicted noise levels.

(1) What increase is considered tolerable?

(2) What levels are considered reasonable for various uses?

(3) Upon what basis is this criteria established (i.e. sleep, speech, task interference or the right to a quiet environment)? The reference for the selected criteria should be cited.

(4) State and municipal standards or ordinances which apply should be cited.

e. What abatement means will be utilized to reduce noise from the completed project; what levels of attenuation will be achieved (abatement methods include barriers, berms, depression of the site, etc.)? The effectiveness of the abatement means should be demonstrated by the use of accepted noise prediction techniques.

(1) What abatement means will be utilized to reduce noise during construction (i.e. acoustical modifications of construction equipment, regulation of hours and days of construction, noise specifications for all equipment used on the project)?

(2) What plans have been made to monitor the noise once the project is completed?

f. What facilities will not be protected by the above abatement measures; what impact might this lack of protection have?

(1) Has consideration been given to procuring the additional land as a buffer zone or compensating for infringement of the use of the property?

(2) A cost benefit study of the trade off between noise reduction and land costs should be made where appropriate.

2. Recommended Criteria

a. Speech Communication

In residential areas or other areas where conversation out-of-doors is anticipated, it is desirable to be able to converse at distances up to 10 feet. As indicated in EPA-NTID 300.7 Effects of Noise on People, page 49, Figure 14, L_{50} levels should not exceed 55dBA. This would provide interior L_{50} levels of approximately 45dBA assuming open windows for ventilation.

b. Sleep Interference

For sleeping purposes maximum levels allowed are suggested peak levels since it is the peaks which cause arousal. EPA-NTID 300.7 Effects of Noise on People, page 68, Figure 17, indicates 50% of the people can be protected from awakening if interior peaks (L_{10}) do not exceed 50dBA. With windows open for ventilation, this suggests L_{10} outside of 60dBA to protect sleep.

Summary: Speech Communication L_{50} outside 55dBA

Sleep Interference L_{10} outside 60dBA

Note: Highway Research Board Report #117, page 30, Table 11, may also be used as a guide to recommended criteria.

c. Permissable Increase

Although a completed facility may not create levels in excess of those recommended, consideration must be given on a site by site basis to the increase from existing levels. EPA-NTID 300.3 Community Noise, Chapter 5, indicates that the degree of annoyance experienced from intrusive sounds depends upon the noise level increase above pre-existing levels as well as upon the existing levels. Therefore some consideration must be given to the sites where levels will be increased substantially even if they do not exceed recommended maximum level specifications. As a general statement increases can be divided into three ranges, related to expected community response:

up to 5dBA increase - few complaints if gradual increase

5-10dBA increase - more complaints especially if conflict with sleeping hours

over 10dBA increase - substantial number of complaints

Generally no attention is needed if the increase is under 5dBA. Some consideration should be given to additional abatement measures or alternate routing or compensation if the range increase is 5-10dBA. If the increase is over 10dBA, the impact is considered serious and warrants close attention.

D. Solid Waste

Projects that will result in creation of solid waste, either during construction or as a result of operation of the completed facility, should address the following information.

1. The quantities and composition of solid waste which will be generated both in the construction process and as a result of operation of the facility.

2. Will any hazardous wastes be produced as a result of the proposed action?

3. Discuss the forecast for long term future waste loads resulting from the project. That is, what additional waste loads from population influx can be anticipated? Increased solid waste loads may overload existing facilities for handling residential, commercial and industrial wastes. Have local waste authorities been made fully aware of the new waste loads that will result from a rapid increase in population?

4. What plan has been developed for the storage, collection and disposal of all the different types of waste that will be generated?

  a. Where and how will wastes be stored?

  b. When will collections be made?

c. What is disposal method?

5. Has the potential for recycling or re-use of wastes generated by the project been fully investigated?

E. Radiation

The Atomic Energy Commission, as the licensing agency, has issued general guidance for the preparation of environmental reports for nuclear power plants. EPA reviewed this guidance and is in general agreement with the specific projections contained in the guide. A copy of the guide may be obtained from the AEC Directorate of Regulatory Standards, Washington, D.C. 20545.

F. Pesticides

The use of pesticides is a widespread practice included as a component of many projects or may be proposed as an independent project. To avoid repetition, we have included discussion of the general impacts of pesticides under the heading "Pesticides Projects" (Sect. IV, page 109). An outline of EPA's concerns can be found in this section. We ask the reader to review this section and to keep in mind that the concerns expressed relate to pesticides projects of any scale; the points raised apply equally well to routine use of pesticides for clearing of brush along highway routes to eradication of agricultural pests on an area-wide basis.

GUIDELINES FOR SPECIFIC PROJECTS

SECTION IV

HIGHWAY PROJECTS

SECTION IV-A

The following are comments and questions directed toward environmental impacts of highway projects. These comments indicate the types of information needed in an impact statement but by no means do they include all of the types of information needed to review the statement. They are to be used as a guide or indication of basic information which will allow a reviewer an opportunity to assess environmental impacts and to adequately review the proposed project. Reference should also be made to Section III, page 22 of the Guidelines for comments which are applicable to highway projects.

I. Description of the Project

A. Describe the physical features of the highway in general terms. Include the following types of information:

1. Configuration of the roadway.
2. Location of corridor.
3. Depressed or elevated sections of the roadway.
4. Areas where the grade will exceed 3%.
5. Areas of cut and fill and rip-rap.
6. Speed limits.
7. User volumes--at present and at ultimate capacity--and indicate the percentage which are trucks.
8. Locations of exits and entrances to the proposed highway including interchanges.

9. Presence of any barriers (formed by road profile, by a solid wall or embankment, by a continuous row of buildings, or by the terrain itself).

B. Describe the corridor selected:

1. Topography.

2. Meteorology, with respect to conditions which are conducive to trapping of air pollutants.

3. Areas of proposed facility where significant air pollutant buildups may occur:

(a) Grades.

(b) Interchanges.

(c) Slow zones.

(d) Exits and dispersion of traffic onto slower-moving city streets.

(e) Tunnels, toll gates, other obstructions to flow.

C. The impact statement should include detailed pictures or graphs of all water bodies and drainage channels within the project area.

D. Describe construction work that may take place in or adjacent to water bodies, including the placement of structures such as pilings, bridges or culverts.

E. Describe soil conditions and areas of potential erosion which will be affected by construction and operation of the project.

F. Describe the amount of culverting or channelization of water courses which will take place as a result of the project. Include areas which will have to be rip-rapped or protected against erosion.

G. Extensively describe any construction which might take place in a designated flood plain area. Describe how the project concurs with House Document No. 465, a report by the task force on Federal Flood Control Policy. See attachment I, Executive Order 11296.

H. Describe any construction operations which may cause water quality degradation, such as gravel washing or borrow pits adjacent to water bodies.

I. Indicate the ultimate fate of drainage from the new highway; indicate the changes that the facility will cause in natural drainage patterns in the project area.

J. Describe applicable Federal, State and local ambient air quality standards.

K. Describe state-adopted plans for achieving and maintaining national ambient air quality standards.

L. Describe the present air quality of the area, particularly with respect to known air pollution problems and their causes, and the combinations of volume, topography and climate which intensify these problems.

M. Describe measures to be taken to assure that air pollution from construction materials processing does not exceed levels specified in State and local regulations.

N. The general discussion of noise presented earlier should be considered for all highway projects. The maximum (hourly) traffic generated noise level should be utilized for predicting noise levels from the completed project. The impact of these levels should be evaluated on the basis of sensitivity of the adjacent use as well as upon the level itself.

O. In addition to noise levels during operation and use of the completed facility, attention should be given to noise generated during the construction period.

1. What length of time is anticipated for construction?
2. What facilities will be impacted in this period?
3. What provisions have been made for minimizing the noise?

(a) Noise limits included in specification of equipment to be used.

(b) Operational limits to be met by acoustical jousings or shields, limitation of hours and days of construction activity, limitations of numbers of pieces of equipment used at one time.

P. What provisions have been made for monitoring the air, water and noise pollution during construction?

Q. In addition to the general issues mentioned above (Section III, page 33) which should be addressed for all projects which generate solid waste, highway construction projects should address the highway litter problem along the road as well as in roadside parks. Litter receptacle provisions should be designed into the overall construction plan. Scheduling for regular pickup of these wastes must be anticipated.

II. Environmental Impacts

A. The statement should describe the present water quality of streams and water bodies adjacent to the project and should provide a prediction of the highway's impact on water quality.

B. State information on the quantity and quality of runoff water from the project and predict the impact of this runoff on the receiving water.

C. Address the impacts which will occur as a result of using de-icers or sand on road surfaces. Include impacts from oils and chemicals which may accumulate on the highway facility.

D. Discuss impacts on water bodies as a result of dredging and filling for highway structures.

E. Indicate methods to prevent debris from reaching water bodies.

F. Evaluation of air pollution impacts of highway projects. In the following paragraphs techniques available for forecasting the air quality consequences are briefly described and general guidelines indicating the level of analysis appropriate for various categories of highway projects are presented. More detailed information may be obtained from the Air Quality Management Section of Region X.

Although the state of the art for evaluating the impact of proposed highway projects is currently not advanced, techniques are available to make such determinations. The most common of these techniques involves the use of mathematical models of pollutant dispersion. These models use as inputs motor vehicle emissions and meteorological data and yield as outputs estimates of pollutant concentrations. Estimates of motor vehicle emissions for use in dispersion modeling can be determined using the procedures described in the most recent version of EPA publication AP-42, "Compilation of Air Pollutant Emission Factors," available from the Office of Technical Information and Publications, Office of Air Programs, EPA, Research Triangle Park, North Carolina 27711. The necessary meteorological data may be obtained from the National Weather Records Center in Ashville, North Carolina, and from some State and local air pollution control agencies.

The types of mathematical models available for estimating concentrations of pollutants of which motor vehicles are a major source vary in complexity and in accuracy. Models for estimating the concentrations of particulates and carbon monoxide, relatively inert pollutants, are presently the most accurate and the most widely available.

Two other pollutants, hydrocarbons and nitrogen oxides, of which motor vehicles are a primary source react in the atmosphere in the presence of sunlight to produce photochemical oxidants. Mathematical models for forecasting the concentrations of hydrocarbons, nitrogen oxides, and oxidants are still in a research stage. Such models will probably be available for general use in approximately a year.

Table 1 is offered as a general guide for determining an adequate level of analysis for estimating the primary air quality consequences of a proposed highway project. In Table 1 a suggested level of analysis is indicated for project categories based on the magnitude of the proposed project and on the severity of the air pollution problem in the area to be served by the project.

Under the 1970 amendments to the Clean Air Act, States are divided into a number of Air Quality Control Regions (AQCR's). These AQCR's are given priority designations based on measured ambient pollutant concentrations or, in the absence of pollutant measurements, on population. For the pollutants of which motor vehicles are a major source there are two priority designations, Priority I and Priority III. The criteria for the priority classification are published on page 15488 of the August 14, 1971, Federal Register. Additional information on the geographic boundaries of AQCR's and their priority designations may be

TABLE 1. LEVEL OF ANALYSIS ADEQUATE FOR ESTIMATING THE AIR QUALITY CONSEQUENCES OF PROPOSED HIGHWAY PROJECTS.

Project category	Geographic area of analysis	Example of applicable dispersion model	Air quality and meteorological monitoring
1. New major highway in urbanizing area of AQCR where transportation control strategies are required.	Areawide	APRAC 1-A	Concurrent monitoring of carbon monoxide, nitrogen oxides, oxidants, wind speed and direction.
2. Major new highway in urbanizing area of Priority I AQCR.			
3. New minor highway or highway capacity improvement in AQCR where transportation control strategies are required.	Corridor of new highway or highway capacity improvement and corridor of other major highways or arterials significantly affected by the proposed project.	HIWAY	Carbon monoxide monitoring.
4. New major highway in urbanizing area of Priority III AQCR.			
5. New major highway in rural portion of Priority I AQCR.			Carbon monoxide monitoring only where extreme meteorological or topographic conditions inhibit pollutant dispersion.
6. New minor highway or highway capacity improvement in urbanizing area of Priority III AQCR.	Corridor		
7. New major highway in rural portion of Priority III AQCR.		Qualitative assessment of corridor alternative best in terms of meteorological and topographical characteristics.	
8. New minor highway in rural portion of Priority III AQCR.			

obtained from the Air Quality Management Section of Region X or from State or local air pollution control agencies.

In reviewing the State-adopted plans for implementing national ambient air quality standards, the Administrator of EPA found that in a number of AQCR's the reductions in pollutant emissions achieved through the Federal motor vehicle emission control program and through control of stationary sources to the greatest extent feasible would be insufficient to meet the standards by the 1975 deadlines set forth in the 1970 amendments to the Clean Air Act. In these AQCR's additional measures, termed "transportation control strategies," for reducing motor vehicle emissions are required. States must submit the transportation control strategies for EPA evaluation and approval by April 15, 1973. The State-submitted strategies must be approved or an EPA strategy promulgated by August 15, 1973.

In Region X the AQCR's containing the metropolitan areas of Fairbanks, Portland, Seattle, and Spokane require transportation control strategies. Environmental impact statements for highway projects proposed for the urbanized portions (as defined by regional transportation studies) of these areas should be based on analyses as rigorous and complete as currently available evaluative techniques permit. Agencies planning highway projects in these four areas should work closely with the State and local agencies responsible for implementing measures for achieving national ambient air quality standards.

The desirable geographic scope of the highway impact analysis for each of the project categories is indicated in the second column of Table 1. Any highway project from the widening of an existing arterial to the construction of a new freeway will affect the other elements of the transportation system of which the proposed project will be a part. The air quality impact of the proposed project thus will always extend in varying degrees beyond the project corridor. A major highway project proposed in an urbanizing area where relatively high pollutant concentrations already exist (project categories 1 and 2 in Table 1) could significantly affect, directly and indirectly, the air quality in a large portion of that area. The effect on air quality of a minor highway in an area with low ambient concentrations of pollutants (project category 8) will probably be limited almost entirely to the project corridor and will not be as significant in the corridors of highways or arterials intersecting the proposed project.

Examples of dispersion models applicable to areawide and corridor analyses are listed in column 3 of Table 1. The two models, APRAC 1-A and HIWAY, were both developed by or under the sponsorship of EPA; other models of comparable accuracy are available. APRAC 1-A may be used for forecasting carbon monoxide concentrations resulting from vehicles traveling a network of streets and highways. HIWAY is designed to predict pollutant concentrations from vehicles traveling a single highway.

The last column of Table 1 indicates the air quality and meteorological monitoring desirable for each project category. Generally, sufficient air quality and wind parameter measurements are not available within the corridor of a proposed project.

G. Noise impacts of highways should be evaluated using criteria similar to those described above (Section III, page 28). Include details on the methodology used and predict the noise levels generated during construction and operation of the project.

H. Discuss the broad range of secondary impacts that will result from the proposed project. For example, what are the possibilities of increased water usage, additional homes, industries and recreation uses if the project is implemented?

I. Identify any adverse impacts which occur in any of these sectors of environmental concern, and describe their nature, the severity of the problem, standards or criteria violated, and any possible mitigation methods which could be employed to minimize these adverse impacts.

III. Alternatives

A. Discuss in detail all alternatives, including the alternative of no action.

B. Discuss alternatives of scope or size of project.

C. Address alternative corridors or highway locations with special attention to projects proposed for location in flood plains.

D. Discuss alternatives in sufficient detail to provide a reviewer the opportunity to realize secondary or long-range impacts on environmental quality for each alternative.

E. Discuss alternative methods of construction if the methods could result in fewer environmental impacts. For example, compare bridges against culverts, and major cut-and-fill operations with alternative locations which would minimize the land disturbance.

F. In the discussion of alternatives, in addition to other routes or roadway configurations, alternate means of transportation should be considered and evaluated even if the agency proposing the project does not have the authority to carry out the alternative.

G. Describe in detail the various corridor alternatives considered and discuss:

1. The air pollution potential for each.

2. Favorable and unfavorable factors of each alternative relative to generation of air pollutants.

3. Why was the selected corridor chosen over the alternatives?

H. Do the corridor alternatives selected and the design alternatives proposed minimize the pollutant concentrations to which sensitive receptors (e.g., the occupants of schools, hospitals, nursing homes) are exposed?

I. Were the air quality consequences of non-highway alternatives evaluated and compared with those of the highway alternatives?

IV. Relationship Between Short-Term Uses and Long-Term Productivity

A. Discuss the project's short-term gain in relation to the loss of long-term environmental resources.

B. Discuss need for the project and immediate economic benefits.

V. Irreversible and Irretrievable Commitment of Resources

Discuss all commitments of resources, including:

A. Permanent alteration of water bodies.

B. Recreation areas lost due to project.

C. Secondary stresses such as urbanization and loss of open space, and the continued commitment to a private-vehicle-operated transportation system.

DREDGING AND SPOIL DISPOSAL

SECTION IV-B

Dredging

Dredging is the removal of earth from the bottom of a stream, lake, river, bay or other water body for the purpose of deepening a navigation channel. Projects involving dredging activities are often accompanied by temporary turbidity and resultant effects on water quality. The following comments are broadly divided into the two main components of a dredging project: (1) the dredging operation itself; (2) subsequent disposal of dredged material (Spoil). These comments are directed toward the environmental impacts of each operation and are to be used as a guide for the types of information needed in an environmental impact statement.

I. Description

A. Describe and predict the effects of dredging activity on water quality.

B. Describe the bottom characteristics and benthic communities in the project area.

C. Describe secondary changes which may occur from sedimentation and water quality degradation due to disturbances from dredging.

D. Describe the method of dredging to be used.

E. State the quantity of material to be removed.

F. Perform and describe an analysis of bottom characteristics in the dredging area. The Environmental Protection Agency's Region X has set forth criteria for performing such an analysis in their July 1971 report, "The Effects of Dredging on Water Quality in the Northwest." The analysis should include descriptions of water quality, soil samples and results of other sampling programs as called for in the July 1971 report.

G. Describe any extraneous material such as submerged cables, piles, pipelines, pipes and other trash which must be removed during the course of construction. What method will be used for disposal?

H. Describe any clearing and snagging debris to be removed during construction operations.

II. Environmental Impacts

A. Examine the impacts on water quality due to construction and subsequent maintenance of the project.

B. Discuss impacts initially resulting from dredging, impacts on receiving waters due to spoil disposal, and impacts to the deep water disposal area.

C. Discuss impacts resulting from effects such as a possible increase of salt water wedge and leaching of pollutants through disposal area dike.

D. Discuss impacts to water due to turbidity, both temporary and periodical.

E. Include provisions set forth to those performing construction activities which will reduce adverse environmental impacts and will keep erosion, turbidity, and siltation at the lowest possible level.

F. State all procedures to be used to minimize impacts, such as coordinating dredging activities with fishery agencies to minimize unavoidable water quality degradation. In order to effectively coordinate these activities, however, the composition of materials to be released into the water and the duration of resultant turbidities must be known.

III. Alternatives

A. Discuss in detail all alternatives to the proposed project including the alternative of no action.

B. Indicate need for project in relation to size of area to be dredged.

C. Suggest alternative means of construction which would prevent or minimize water quality degradation using EPA standards for guidance.

D. State in detail impacts resulting in alternative locations for the proposed project.

IV. Relationship Between Short-Term Uses vs. Long-Term Productivity

A. Will project alter the natural characteristics of a water course for a short-term economic gain?

B. What will be the long-term gain from the proposed project? Is this gain worth the environmental cost?

V. Irreversible and Irretrievable Commitment of Resources

A. Discuss the commitment of all resources.

B. Will the project result in the commitment of the water body to a single-use purpose such as navigation at the expense of long-range environmental values?

Spoil Disposal

Spoil disposal is the process of disposal of material removed by dredging by placing such material on dry upland areas, adjacent wetlands or by disposal into deep water areas. Unless properly controlled, landfills may destroy the natural character of the land, create unnatural heavy erosion and silting problems and diminish the existing water surface. The most important point to consider in dredging activities is the preparation of a comprehensive plan of spoil disposal to insure adequate environmental protection during the construction and operation of the project. The following are specific comments and questions dealing with spoil disposal projects.

I. Description

A. Describe characteristics and location of the proposed spoil disposal site.

B. Is there a comprehensive plan for disposal sites which takes into account the accumulative effect over time and the decreasing amount of suitable sites for disposal?

C. Describe the present land use of spoil disposal site.

D. Describe characteristics of the material to be disposed including:

1. Nature and quality of material.

2. Dewatering properties of material to be disposed.

3. Compactability of material and settling rates of material to be disposed.

4. Disposal schedule--to insure that operations do not degrade water quality during times of anadromous fish migration.

E. When the project involves land disposal discuss the following:

1. Method of disposal to be utilized, i.e., pipeline discharge, barge, hopper (underway or stationary).

2. What type of leachates will be produced from the spoil material and what is planned for protection of the groundwater?

3. Methods to insure that spoil water does not adversely affect water quality both during construction and after completion of the project.

4. Provisions for monitoring during discharge--water quality, sediment transport, precautions to prevent "short" circuiting dumping.

5. Consider and discuss the following for water disposal:

a. In addition to discussing the characteristics of the site, will EPA criteria be satisfied?

b. Describe methods to be used for water disposal, including volumes and site selection.

c. Describe the water characteristics at the site.

II. Environmental Impacts

A. Discuss methods to control runoff and erosion from land disposal.

B. Discuss effects on water quality, such as:

1. Temporary turbidity.

2. Possible DO depletion due to agitation of organic material.

C. Discuss impacts to aquatic life.

D. Discuss effects on hydrologic patterns and possible interference with littoral drift patterns and circulation.

E. Discuss the impacts on fill areas, i.e., tide lands, shoreline areas, estuaries.

F. Discuss impacts resulting from increased noise levels.

III. Alternatives

A. Discuss all alternatives including the no action alternative.

B. Discuss alternative types and methods of dredging and disposal, such as pipeline discharge, barging, or hopper methods.

C. Discuss alternatives to dredging.

D. Discuss alternative areas of sites for spoil disposal.

E. Volume of dredging or size of project should be fully considered.

F. Discuss impact of port docking patterns upon the demand for dredging. Can alternative patterns produce the amount of dredging required to support port operations?

IV. Relationship Between Short-Term Use vs. Long-Term Productivity

A. Will project alter the natural characteristics of a water course for a short-term economic gain?

B. Accumulative effects on natural characteristics of water bodies. This includes secondary long-term stresses on the project area.

V. Irreversible and Irretrievable Commitment of Resources

A. Discuss the impacts due to a commitment of a natural water body to an artificial, single-use purpose such as a small boat marina, marine and navigation channels, etc.

B. Effects project will have on commiting an area causing a possible loss of wildlife habitat and disruption of wildlife activities.

LAND MANAGEMENT

SECTION IV-C

The two agencies most involved in land use management are the U.S. Forest Service and the U.S. Bureau of Land Management. Most of our past experience in EIS review has been with Forest Service impact statements, so the following comments based on this experience are more directed toward the type of impact statements we have received from the Forest Service. Keep in mind, however, that these comments may be extrapolated to the Bureau of Land Management's environmental assessment and planning process as well as other specific types of projects, such as grazing and mining.

An agency whose function is to manage lands is involved with every aspect of land use. Decisions must be made which correspond to both public and private needs and provide for these increasing demands. Areas not set aside for nor qualifying as wilderness areas must be carefully considered and studied so that decisions can be directed toward productive land use. Environmental impacts which will occur if a proposed use is initiated are important factors in such decisions. The agency proposing a land use must conscientiously survey an area's productivity as it relates to environmental costs. Such uses include recreational areas, municipal watersheds, wildlife areas, timber harvestings, grazing and mining.

An agency provides the essential information for proposed land use by initiating a broad scale, long-term use plan which outlines tentative management approaches for an area. The subsequent plan, often referred to as a planning unit or management framework plan, discusses benefits which may be derived from an area. A definition of a planning unit and a description of general guidelines for the preparation of an environmental impact statement for a planning unit follows. In addition to the basic planning unit guidelines, we have included general comments and questions for two types of projects which may be considered in a planning unit. These illustrative projects, recreation areas and timber sales, are only two of the multi-uses that constitute unit planning, although such projects may at some time be considered separately.

Planning Units

A planning unit describes long-range multiple use objectives and policies for a specific land tract, including the allocation and values of resources. The plan provides guidance to a district manager for an area based on existing inventories and knowledge of how a land tract can be managed, utilized and protected. It addresses such resources as recreation, timber, watersheds, mining, and wildlife. The compatibility of these resources to each other and to existing conditions defines the suitability of activities that will be allowed. A planning unit may be considered as an initial concept that will be developed into precise descriptions of proposed activities.

Once a detailed planning unit for an area has been devised, an environmental impact statement can be prepared. Specific details of the proposed land use plan and its probable impacts are essential to an evaluation of an environmental impact statement.

Planning Unit General Guidelines

I. Description

A. Describe in qualitative and quantitative terms all biological resources and water resources. This discussion should include how the biotic communities have adopted to the physical environment, and should also include the hydrologic cycle of adjacent water bodies.

B. Describe the soil characteristics and geology in the project area.

C. Describe all natural resources in the project area including wilderness areas. The statement should recognize that these wilderness areas are a diminishing resource.

D. Describe existing air quality and any applicable standards or regulations.

E. Include graphic and pictorial information.

F. Describe meteorological conditions in the area.

G. Describe past, present, and proposed land use.

H. Describe accessibility to planning area. Include transportation plans.

II. Environmental Impacts

A. Discuss impacts which may occur to water quality, air quality, noise, solid waste disposal and pesticide use.

B. Discuss the impacts the project will have on the physical environment such as soils, geologic formations, hydrology, drainage patterns, etc.

C. Discuss methodology to be used to minimize adverse environmental impacts.

III. Alternatives

A. Discuss the full range of management alternatives considered in the course of planning the action.

B. Discuss why the proposed alternative was chosen.

C. Discuss alternatives in sufficient detail so reviewers may realize secondary or long-term environmental impacts.

IV. Short-Term Uses vs. Long-Term Productivity

A. Discuss environmental cost as it relates to short-term uses and long-term productivity.

B. Discuss how actions taken now will limit the number of choices left for future generations.

V. Irreversible and Irretrievable Commitment of Resources

Discuss resources to be utilized and what the replacement potential of these resources is.

Timber Sale

The following are guidelines to be used for the writing of an EIS on timber sales. The action is the final component in the timber management plan.

I. Description

A. Describe the timber sale area and include a sale layout map.

B. Describe the types and quantity of timber to be harvested including logging methods to be utilized.

C. Describe the general features of the timber sale area such as land forms, geology and soils which may require special harvesting techniques.

D. Describe all proposed road construction.

1. Describe locations of culverts and bridges.

2. Describe measures that will be used to minimize environmental impacts.

E. Describe water bodies located in the project area (see Sect. III, page 23).

F. Predict the quantity of slash and state method of disposal.

II. Environmental Impacts

A. Discuss impacts on water quality and quantity during and after completion of the proposed project. Address impacts which may occur to the biotic community, giving special consideration to any expected changes to aquatic systems as a result of increased sediment, temperature, or potential water flow obstructions. Special attention should be given to impacts on streams from disruption of stream banks, channel modifications, runoff and stream crossings.

B. Discuss impact to air quality as a result of temporary equipment use and slash burning techniques.

C. State existing noise levels and expected noise levels during construction.

1. Include expected noise levels over transportation routes and distances of these routes.

2. Discuss any requirements placed on logging equipment to minimize the increase in noise levels.

D. Discuss the effects timber harvesting will have on wildlife habitats with special attention to endangered species.

E. Describe borrow areas for road construction and methods to revegetate these areas after construction.

III. Alternatives

A. Discuss alternative harvesting methods (i.e., selective harvesting, cable logging, clear cutting, skyline logging, and helicopter logging) and the environmental impacts associated with each.

B. Discuss alternatives to specific measures which could minimize environmental impacts, i.e. road locations, bridge vs. culvert, etc.

C. Illustrate alternative trucking routes which might lessen noise impacts.

D. Discuss alternatives in relation to the size of the operation.

E. Discuss alternative land uses of the designated area.

IV. Short-Term Uses vs. Long-Term Productivity

A. Address short-term use benefits and relate them to environmental losses.

B. Discuss the long-term productivity associated with the project.

V. Irreversible and Irretrievable Commitment of Resources

A. Discuss the quality, quantity, location, and accessibility of those renewable and nonrenewable resources to be utilized by the proposed action.

B. Identify the environmental cost of losing any irreversible resources.

C. Discuss effects of committing land to timber harvesting use.

Recreation Areas

Recreation is one of the components of multiple use forest management. The term "recreation area" refers to a broad range of uses from preservation and enjoyment of the natural environment (as provided by the National Wilderness and Wild and Scenic Rivers Systems) to highly developed recreation areas such as ski resorts. It is the latter type of recreation area which places the greatest stress on the environment and which requires the inclusion of careful planning and environmental safeguards to preserve the delicate balance between man and nature. The following refers to those recreational areas such as campsites, winter, and summer resorts.

I. Description

A. Illustrate the proposed facility and the topography of the area by including graphs or pictures.

B. Describe the geology and soil characteristics of the area.

C. Describe the biotic community. List types of vegetation and animals including their present ecological relationship. Identify any rare or endangered species in the area.

D. Describe the quantity, quality and characteristic uses of water bodies in the area.

E. Describe the location and placement of any facilities associated with the project, i.e. base facilities, lift terminals, and parking lots.

F. Describe the expected uses of the new facility. Discuss seasonal uses. Will recreation vehicles be allowed?

G. Describe potable water supply.

H. Describe the methods included in the project to provide waste treatment. Sufficient information must be provided to determine whether the planned treatment facility will provide the waste treatment necessary to prevent stream degradation. Indicate the design capacity of any planned treatment plant. In view of the seasonal, transient nature of the users of the recreational facility, how will adequate waste disposal be maintained under such varying load conditions? Will emergency storage be necessary to avoid spillage into adjacent water bodies if the treatment facility fails?

I. Discuss the ultimate disposal of wastes generated by users of the facility. Indicate the types and volumes of such wastes. Consideration of disposal methods should include all practicable methods to dispose of liquid and solid wastes and should be considered in sufficient detail to allow the reviewer to decide whether adequate environmental protection features have been included. Will existing solid waste plans be affected by the new facility?

II. Environmental Impacts

A. Discuss the impacts which will occur to the ecosystems in the project area.

B. Address all impacts on water and air quality due to construction and maintenance of the proposed project.

C. Discuss impacts of noise generated by the project. Include present and predicted noise levels due to the proposed activity.

D. Discuss impact on soils and geology in the area. Details should be included on the possible effects soil erosion and turbidity will have on existing water bodies and the affected ecosystem.

E. Discuss the secondary impacts accompanying the proposed project. Recreation areas create many new demands in and around an area. Discuss any predicted impacts as a result of these new demands.

F. Describe all controls to be incorporated into the project to prevent or reduce any environmental impacts. Specific details should be included on the method to prevent soil erosion, excessive noise levels, air, and water degradation. The statement should also discuss any Federal agency supervision that will be performed to insure that all environmental control requirements will be met.

III. Alternatives

A. Discuss the no action alternative.

B. Discuss alternative locations and impacts for the proposed project.

C. Discuss alternatives related to the size and magnitude of the proposed action.

D. Discuss alternative locations of facilities which might lessen the environmental impacts.

IV. Short-Term Uses vs. Long-Term Productivity

A. Address the short-term benefits and relate them to environmental losses.

B. Discuss the environmental trade offs involved in converting an area to a single purpose resource.

C. Discuss gains from long-term productivity of the area.

V. Irreversible and Irretrievable Commitment of Resources

Discuss the quantity, quality, location and accessibility of those renewable and nonrenewable resources to be utilized by the proposed action. For example, converting a multiple purpose area to a single purpose use may be irretrievable.

AIRPORTS

SECTION IV-D

In general, the features of airports are amplifications of the corresponding features of highway projects. Air quality, solid waste, and noise are of similar concern; it is the magnitude or scope of the different projects which will determine the degree of impact. Rather than duplicate the general comments on Air Quality, Solid Waste and Noise here, we ask the reader to refer to the Highway sections on these areas for general guidance. The following comments are directed more towards specific details to be incorporated in the description of the proposed airport project to allow an assessment of the impacts following the highway guidelines indicated above.

The Noise Control Act of 1972 requires EPA to study existing aircraft/airport standards, and report the findings to Congress by August 1973. The results of this study may lead to changes in presently accepted prediction methods and standards. Therefore, the study may lead to changes in these guidelines.

I. Description

A. Describe the project location and indicate the existing and anticipated number and type of aircraft, including military, using the field at nighttime (10 p.m.-7 a.m.).

B. Indicate the existing and anticipated number and type of aircraft, including military, using the field at daytime (7 a.m.-10 p.m.). Cite reference for traffic projections.

C. Indicate existing and proposed runway capacity, aircraft mix, taxiway capacity, gate capacity, and runway separation and orientation.

D. Indicate the existing and anticipated approach, departure, and holding patterns.

E. Include NEF (Noise Exposure Forecast) or CNR (Composite Noise Rating) maps. Indicate information utilized and assumptions made in developing these contours.

F. Indicate the location of any residences, schools, hospitals, parks or other land uses sensitive to noise within the NEF 30 contour or the CNR 100 contour.

G. Indicate the zoning of the land within the NEF 30 and CNR 100 contours.

H. Noise levels from engine test areas and/or run-up facilities should be given.

I. If new runways are involved, there should be a noise impact evaluation of all feasible runway alignments.

J. There should be a discussion of operational alternatives that could lessen the noise impact, even if such operations may not be within the jurisdiction of the agency issuing the EIS.

K. Describe present disposal plans for liquid and solid wastes generated from terminal operations as well as aircraft operations. Detail the effects of disposal of sanitary and industrial wastes on nearby municipal treatment plants. Disposal of solid wastes within two miles of runways should be prohibited to minimize potential for aircraft/bird strikes.

L. Describe quantities and types of solid wastes accumulated during preparation of the land and during construction activities. Describe locations and particular data on physical structures to be removed or relocated. Describe the planned method of disposal of all solid wastes generated by construction of the project.

M. Describe any dredging or land filling activities necessary as part of the project. Describe sources of fill, disposal sites for excess material, and methods to safeguard water quality. Refer to the section "Dredging and Spoil Disposal" (page 51) for further details.

N. Include an evaluation of the consequences of the proposed action on the air quality around other airports in the same metropolitan area.

O. Describe the design and operating procedures proposed for the new airport or airport expansion. Will these procedures minimize the extent of air quality degradation?

P. Will all the stationary sources of air pollutant emission associated with the proposed airport or airport expansion meet applicable emission regulations?

Q. During any construction phase of the proposed action, procedures must be followed which will minimize the quantities of pollutants emitted into the ambient air. Are the procedures consistent with Federal Aviation Administration Advisory Circular No. 150/5370-7, "Airport Construction Controls to Prevent Air and Water Pollution," and with other more stringent Federal, State or local regulations?

II. Environmental Impacts

A. Describe the primary and secondary air quality impacts (e.g., emissions from land use developments stimulated by the proposed action) resulting from the project. Will these impacts prevent attainment and maintenance of Federal, State or local ambient air quality standards?

B. The level of analysis employed for evaluating the impact of any proposed action involving new airports or airport expansions should reflect the magnitude of the action, the meteorological and topographic characteristics of alternative locations and the severity of the air pollution problem in the area where the action is proposed. The priority designations given the Air Quality Control Regions into which all States are divided provide an index of the air pollution problem severity (see page 42). Mathematical models of air pollutant dispersion can be used to forecast the changes in air quality resulting from a new airport or airport expansion. (See the brief discussion of dispersion modeling under the guidelines section describing air quality impact evaluation techniques for highway projects, page 42). Estimates of air pollutant emissions from aircraft, aircraft ground service vehicles, airport access traffic, aircraft fuel distribution, and airport-related stationary sources such as heating plants can be made using information contained in two EPA publications: AP-42, "Compilation of Air Pollutant Emission Factors," and APTD-1135, "Guide for Compiling a Comprehensive Emission Inventory." Both publications are available from the Office of Technical Information and Publications, Office of Air Programs, EPA, Research Triangle Park, North Carolina 27711. These can also be used in estimating the air pollutants from the land development forecast to result from the proposed airport or airport expansion.

Relatively detailed analysis of the air quality impacts of large metropolitan airports have been made (see, for example, "An Air Pollution Impact Methodology for Airports and Attendant Land Use" prepared for EPA by the Argonne National Laboratory Center for Environmental Studies under Interagency Agreement EPA-IAG-OMICD and published January, 1973).

III. Alternatives

A. Discuss the "no-project" alternative.

B. Discuss alternative sizes and scope of the proposed project.

C. If the proposed action is a new airport, have the air quality impacts of other alternatives, including expansion of existing airports, been considered? Conversely, if the proposed action is an expansion of an existing airport, have the air quality impacts of a new airport been evaluated?

IV. Relationship Between Short-Term Uses vs. Long-Term Productivity

A. Discuss the need for the project. Include planning consideration given to directing non-scheduled aircraft to satellite airports if applicable.

B. Discuss the projects short-term use and relate it to long-term productivity.

C. Discuss the land use commitment and how it relates to committing future generations.

V. Irreversible and Irretrievable Commitment of Resources

A. Describe the commitment of resources involved in construction of the project.

B. Discuss the availability of these resources.

WATER RESOURCE DEVELOPMENT

SECTION IV-E

Multiple-Purpose Storage

Multiple-purpose storage refers to the capture and storage of water for a set of specific functions as opposed to a single-purpose use of the water. Functions often incorporated into multiple-purpose projects include storage for power, navigation, flood control, recreation, fish and wildlife enhancement, and water supply.

I. Description

A. Describe the project setting.

B. Describe project functions in a way that a reviewer can assess the impacts of each separable project purpose.

C. Describe the condition of the water shed, including:

1. Soil and geology characteristics.
2. Livestock areas and agricultural lands.
3. Towns, industries and waste treatment facilities.
4. Discharge points and nonpoint sources of waste discharge.
5. Logging areas, mining or other land management and resource utilization activities.
6. Existing or potential modifications to the natural hydrology of the water body; existing impoundments.

D. Water Quality.

1. Describe the hydrologic characteristics of the water body--flow ranges, etc.

2. Flooding characteristics and flood recurrence intervals.

E. Water Quality Description

1. Describe the quality of inflowing water, recognizing that quality is a function of condition of upstream watershed. Identify sources of pollutants (municipal and industrial, feedlots, agricultural areas).

2. Describe present water quality parameters under conditions of varying flow, specifically low flow.

3. Describe fully the present sediment load carried by the water. Describe all areas within the project watershed which exhibit erosion potential or may contribute turbidity or sediment due to construction and operation of the project.

F. Describe project design; include pictures and charts of major project features.

G. Describe the project operation.

1. Schedule of releases for each project function.

2. Water level fluctuations.

3. Levels and areas of conservation and flood control pools.

4. Other pertinent information as needed to allow reviewer to assess impacts of project operation.

II. Environmental Impacts

A. It is important to recognize the complexity of the changes that can occur in water quality due to impoundment and artificial management of a river. These changes can be broadly classed as:

1. Changes which might occur in the water due to the presence of the project, including water quality changes due to impoundment such as D.O. depletion in bottom layers, seasonal temperature stratifications, effect on sediment transport, warming trends, potential eutrophication.

2. Changes which might occur in water quality due to project operation. For instance, operation of a reservoir for flood control can prolong the release of turbid water later in the year than normal and can appreciably alter temperature regime of the stream for a distance below the dam. Similarly, elimination of high velocity flood flows can disrupt the flushing action of the river and can lead to increased sediment accumulation and resultant effects on aquatic life.

III. Alternatives

Show evidence of an environmental study for all practicable alternatives, including:

A. The alternative of "no project."

B. Scope of project.

C. Location.

D. Preservation of river. Describe the potential for inclusion of the river in the National Wild and Scenic Rivers System or a similar state system to preserve the natural values of the river.

E. Alternative methods of accomplishing each proposed project function. For instance, in the case of flood control, show that adequate consideration has been given to non-structural alternatives such as flood plain management or zoning.

IV. Relationship of Short-Term Uses vs. Long-Term Productivity

A. Effects project will have on natural value of free-flowing rivers, which must be considered diminishing resources themselves.

B. Potential long-term decreases in environmental productivity due to artificial control of basin hydrology for short-term economic gain.

C. Indicate how the project will agree with the goals and aims of House Document No. 89-465 by the Presidential Task Force on Federal Flood Control.

V. Irreversible and Irretrievable Commitment of Resources

A. Effects of connecting a free-flowing river to an operated and artificially managed water body.

B. Potential commitment of river's flood plain for development.

Levees, Dikes and Bank Stabilization Projects

Levees and dikes are generally single-purpose flood protection structures built adjacent to the banks of streams susceptible to flooding. Bank stabilization projects include such features as reduction of erosion from riverbanks and removal of natural growth and debris from channels to allow passage of greater flows.

I. Description

A. Detailed description of location and size of project.

B. Detailed description of project and facilities required to construct and operate facility.

C. Describe existing water quality at site.

D. Describe construction methods to be used with description of methods to be employed to prevent environmental damage.

E. Describe coordination with fishery agencies to avoid turbidity during times of anadromous fish migration in project area.

II. Environmental Impacts

A. Effects on water quality due to construction and operation.

B. Effects on wildlife of reduction of riparian habitat.

C. Mitigation methods for turbidity.

D. Effects of increased velocity due to channelization of flood flows.

E. Effect on natural drainage systems.

III. Alternatives

A. No project.

B. Structural vs. non-structural methods of satisfying project goals, such as (in the case of flood damage reduction):

1. Flood plain management.
2. Flood plain zoning.
3. Flood insurance.

C. Site locations, such as levees set back from riverbanks as opposed to levees immediately adjacent to banks.

IV. Relationship of Short-Term Use vs. Long-Term Productivity

Long-term effects of reducing flooding, recognizing the beneficial effects of flooding on flood plain soil fertility.

V. Irreversible and Irretrievable Commitment of Resources

A. Loss of wildlife habitat due to diking and filling for levees.

B. Commitment of material and equipment.

C. Commitment of recreation areas or possible recreation areas.

Irrigation

Irrigation is the practice of applying water to land by controlled artificial means to promote growth of selected crops in areas in which the natural hydrologic cycle may preclude such growth.

I. Description

A. Location and size of project.

B. Describe source of water.

C. Amount of water to be supplied per acre and method of application.

D. Describe crops to be irrigated.

E. Describe transport systems to be utilized to minimize water losses; describe needs to implement irrigation methods which best utilize water resources.

F. Describe present nature of project lands, soil types, vegetative cover, erosion potential, areas of salt-affected soils, other pertinent information.

II. Environmental Impacts

A. Predict amount and locations of runoff to be expected.

B. Predict water quality of irrigation return flows. Consider parameters such as:

1. Nutrient loading.
2. D.O., temperature, pesticides, total solids.
3. Quality of both surface and subsurface flows.
4. Salinity.
5. Sediment loading and turbidity.

C. Evaluate the impacts of irrigation flows on quality of the receiving water, in terms of the same parameters.

D. Low flow problems associated with irrigation diversions.

III. Alternatives

A. No project.

B. Alternative sources of water, such as reservoir storage vs. ground water for irrigation purposes, and interbasin transfers. Include sufficient information for each alternative to allow assessment of the impacts of each.

C. Alternatives to insure the most efficient use of water.

1. Sprinkler irrigation or similar methods of water application.

2. Covered conveyance systems.

3. Water management to minimize the adverse effects of irrigation return flows.

IV. Relationship of Short-Term Use vs. Long-Term Productivity

A. Insure that the conversion of land to irrigated monoculture will be the best and highest land use.

B. Long-term effects on adjacent life-support systems.

V. Irreversible and Irretrievable Commitment of Resources

A. Amount of land committed for single-purpose resource.

B. Amount of water to be committed compared to economic gain.

Small Boat Basins

Small boat basins are facilities which provide boat launching, storage, supplies and services for small pleasure craft.

I. Description

A. Describe features of the project and project area.

B. Describe size of project.

C. Detailed charts of moorage spaces, floats, or piers and related features.

D. Map showing areas of fill placement and dredging area.

E. Describe facilities and zoning ordinances in project area.

F. Describe how the proposed marina fits into a comprehensive plan for land use.

G. Our past experience with small boat basins shows that considerable care must be taken in the project design to allow adequate circulation and flushing within the basin and prevent the development of areas of stagnant or brackish water with resultant concentrations of pollutants. This then should be fully described in relation to existing water circulation patterns.

II. Environmental Impacts

Environmental Impacts of wastes generated by the project.

A. Sanitary wastes.

1. In view of the recent EPA regulations regarding the use of holding tanks for sanitary wastes generated by watercraft, the statement should describe facilities included for the collection, treatment and disposal of domestic sewage and other liquid wastes generated by users of the small boat basin.

2. Indicate number of users and quantity of wastes to be generated.

3. Detail collection methods such as pump-out facilities.

4. Ultimate disposal of waste should be indicated--where will wastes go after being pumped out? If into a nearby municipal treatment system, the EIS should analyze effects on system's ability to handle such wastes. The statement should clarify the possibility of connecting pump-out facilities to existing sewer lines and the effect on the system's ability to process additional wastes.

5. Sanitary wastes generated by onshore users. Indicate sanitary facilities provided to adequately treat and dispose of domestic wastes in conformance with Federal and state water pollution control regulations.

B. Oil and Hazardous Materials.

1. Methods to minimize the possibility of oil spillage into basin are of concern and should be considered.

2. Prevention of spills by both enforcement of applicable regulations and operational controls should be instituted to prevent water quality degradation.

3. During marina construction operation, recommend that the sponsor develop and enforce regulations regarding care in the handling and movement of petroleum products and other hazardous materials to prevent spillage.

4. Determine the pollution potential of any material used in project construction and evaluate the effect of that pollution. Constituents of natural materials used for construction or beach control may cause excessive turbidity or silting. Pollutants in the material, or on the material in the case of treated pilings, may be transferred to the water.

C. Venting of Bilge Water.

The venting of any bilge water within the harbor confines can result in water quality deterioration and should be rigidly controlled.

D. Circulation, Flushing, and Water Movement.

1. Indicate impacts on existing patterns of circulation and water movement, should the project be implemented.

2. State the impacts which may be caused by interference of planned structure on water movement:

a. Effects of construction of breakwaters on currents.

b. Analyze changes resulting from planned structures and alignments and resultant effects--areas of little water movement; changes in drift pattern, stagnant areas.

3. Circulation or flushing in a small boat basin may be impeded, resulting in stagnant water and increased concentration of pollutants.

a. Indicate tidal volume (tidal prism).

b. Analysis of flushing action, dispersion due to tidal movement.

c. Analyze under worst conditions--i.e., very low tidal range and high use of facility.

d. Will disruption of the potential existing weak circulation in the bay preclude adequate flushing of the small boat basin and result in water quality degradation?

III. Alternatives

A. No project.

B. Alternative design.

C. Alternative placement and dredging spoils.

D. Alternative location and size.

E. Floating Breakwaters as Alternatives.

1. Designs incorporating floating breakwaters or structures on piles with openings to allow sufficient circulation would minimize water quality problems associated with the basin.

2. Floating breakwaters are generally more satisfactory environmentally than fixed breakwaters in the same location.

3. Considering often weak tidal action of many areas and thus questionable water circulation, it is important that the design include any measures necessary to insure adequate flushing and minimal interference with water circulation and exchange with the outside channel.

4. May be possible to allow adequate circulation if the planned facilities are floating or on piles to allow water movement through and underneath the structures.

F. Alternatives to Insure the Control of Wastes.

In view of potential water quality problems resulting from disruption of the harbor circulation and lack of flushing action, the importance of developing and enforcing stringent regulations cannot be overemphasized.

IV. Relationship of Short-Term Uses vs. Long-Term Productivity

Short-term economic gains vs. the loss of long-term environmental productivity.

V. Irreversible and Irretrievable Commitment of Resources

A. Development of the estuaries and coastal waters for boat basins, beach protection, navigation and other facilities not only removes valuable land from production, but also may interfere with production in other areas through modification of circulation and littoral drift patterns. In addition, there is a potential for water quality control problems developing.

B. Define the fish and wildlife habitat areas of primary importance needed to maintain or increase the present population. Determine the impact on hard-shelled clam resources, fish feeding, rearing and migration areas, eel grass areas and existing beaches as a result of each alternative. Determine the effect on the aesthetics of the area.

COMPREHENSIVE PLANNING

SECTION IV-F

Comprehensive land use planning is necessary to minimize the adverse environmental effects of any type of resource development. An environmental evaluation cannot be considered complete without a consideration of the direct and secondary effects of the project on the surrounding land use.

One must be aware of the constraints under which planning may be progressing due to existing land-use plans, framework studies, etc., but also the planner must recognize the need for comprehensive planning and for adequate analysis of developments so as to minimize adverse environmental effects and interference with natural processes. We suggest that projects be considered in an overall plan of development which allows for the secondary impacts of the specific proposal in such a way as to insure rational land use and to best protect the natural environment. For instance, in the case of a project such as a small boat basin, we suggest that the project be considered in an overall plan of development of small boat marinas to avoid the haphazard construction of marinas at random locations.

Since the proposed project will likely provide the impetus in the area of substantial increases in commercial enterprises, traffic, and the demand for public services, the sponsor should indicate how the project fits into a master plan for community development. The EIS should describe the position of the specific project in such a plan and should indicate similar developments in the area, and any projects in the planning stage so as to allow judgment of a number of projects to be developed in the area. The statement should provide information on the relation of this project to ongoing studies in the same vicinity.

RADIATION

SECTION IV-G

EPA uses the following guidance in the review of environmental impact statements for nuclear power plants (see Radiation General):

OBJECTIVES OF THE PROPOSED FACILITY

Requirement for power
Demand characteristics
Power supply
System demand and resource capability comparison
Input and output diagram
Report from Regional Reliability Council
Other primary objectives
Consequences of delay

THE SITE

Site location and layout
Regional demography, land and water use
Regional historic and natural landmarks
Geology
Hydrology
Meteorology
Ecology
Background radiological characteristics
Other environmental features

THE PLANT

External appearance
Reactor and steam-electric system
Plant water use
Heat dissipation system
Radwaste system
Chemical and biocide systems
Radioactive materials inventory
Transmission facilities

ENVIRONMENTAL EFFECTS OF SITE PREPARATION, PLANT AND TRANSMISSION FACILITIES CONSTRUCTION

Site preparation and plant construction
Transmission facilities construction
Resources committed

ENVIRONMENTAL EFFECTS OF PLANT OPERATION

- Effects of operation of heat dissipation system
- Radiological impact on biota other than man
  - Exposure pathways
  - Radioactivity in environment
  - Dose rate estimates
- Radiological impact on man
  - Exposure pathways
  - Liquid effluents
  - Gaseous effluents
  - Direct radiation
    - Radiation from facility
    - Transportation of radioactive materials
  - Other exposure pathways
  - Summary of annual radiation doses
- Effects of chemical and biocide discharges
- Effects of sanitary and other waste discharges
- Effects of operation and maintenance of the transmission system
- Other effects
- Resources committed

EFFLUENT AND ENVIRONMENTAL MEASUREMENTS AND MONITORING PROGRAMS

- Applicant's pre-operational environmental programs
  - Surface waters
  - Ground Water
  - Air
  - Land
  - Radiological surveys
- Applicant's proposed operational monitoring programs
  - Radiological monitoring
  - Chemical effluent monitoring
  - Thermal effluent monitoring
  - Meteorological monitoring
  - Ecological monitoring
- Related environmental measurement and monitoring programs

ENVIRONMENTAL EFFECTS OF ACCIDENTS

- Plant accidents
- Transportation accidents
- Other accidents

ECONOMIC AND SOCIAL EFFECTS OF PLANT CONSTRUCTION AND OPERATION

- Value of delivered products
- Income

Employment
Taxes
Externalities
Other effects

ALTERNATIVE ENERGY SOURCES AND SITES

Alternatives not requiring the creation of new generating capacity
Alternatives requiring the creation of new generating capacity
  Selection of candidate regions
  Selection of candidate site-plant alternatives
Comparison of practicable alternatives and the proposed facility

PLANT DESIGN ALTERNATIVES

Cooling system (exclusive of intake and discharge)
Intake system
Discharge system
Chemical systems
Biocide systems
Sanitary waste system
Liquid radwaste systems
Gaseous radwaste systems
Transmission facilities
Other systems
The proposed plant

PESTICIDE PROJECTS

SECTION IV-H

The following items would pertain to any type of pesticide use and should be included in the Environmental Impact Statement.

I. Describe the problem or situation.

A. What is the pest (e.g., grasshoppers, sagebrush)?

B. What is the affected species or areal type (e.g., specific crop, grazing lands)?

C. What is location and area of infestation?

D. What is the severity or degree of infestation on a measurable basis (e.g., percent of acreage involved, insect larva counts, etc.)?

E. If possible, determine the expected longevity of the infestation (e.g., insect larval emergence periods, sagebrush growth cycle).

F. Report all sensitive areas within the problem zone (e.g., water bodies, human populations, domestic crops or animals).

G. What criteria will be used to identify the specific areas to be treated (e.g., insect egg counts, noxious weeds per unit area, sensitive areas)?

II. Define the intended goal in terms of accomplishment.

A. Is goal total eradication or controlled growth?

B. If goal is controlled growth (e.g., sagebrush control), what is expected re-growth time cycle?

C. How will accomplishment level(s) be monitored (e.g., insect egg, larva or adult counts, aerial or ground vegetation surveys)?

III. What are all the alternative control methods? Each of the alternative controls considered should be separately described in detail using a common format for each individual method, such as:

A. Chemical alternatives.

1. Identify each pesticide by trade name; active ingredient(s) by chemical name and percentage active component; and EPA registration number, if applicable.

2. Define each proposed method of application and rate (e.g., aerial, fixed-wing, and pounds actual/acre).

3. What is disposal method for empty pesticide containers?

4. Describe adverse environmental effects which cannot be avoided such as:

a. Primary or immediate effects (e.g., fish kills, bee kill, valuable crop damage).

b. Secondary or long-term effects (e.g., build up of persistent pesticides in soil profile; leaching into water supplies and uptake by biota).

c. How will each level of effect (immediate and long-term) influence the productivity of the environment.

5. What beneficial impacts will probably occur on both short- and long-term bases.

6. Describe any irreversible and/or irretrievable commitments of resources which may result from this method of control. Discuss any risks of such occurances in view of potential damages from pesticide accidents (spills, etc.)

7. Project cost analysis of pesticide and its application.

B. Mechanical Alternatives.

1. Identify the method of control (e.g., burning, chaining).

2. Describe adverse environmental effects which cannot be avoided, such as:

a. Primary or immediate effects (e.g., air pollution, escaped fire, destruction of valuable plants).

b. Secondary or long-term effects (e.g., erosion, establishment of noxious plant life).

c. How will each level of effect influence the productivity of the environment?

3. What beneficial impacts would probably occur on both short- and long-term bases?

4. Describe any irreversible and/or irretrievable commitments of resources which may result from this method of control.

5. Project cost analysis of the mechanical method.

C. Biological Alternatives.

Consider and discuss all factors listed under "Chemical Alternatives" which could pertain to biological control methods.

D. Alternatives of Integrated Controls.

If feasible, discuss the potentials of using an integrated system of control using pesticide and mechanical methods combined to reduce the quantity of chemical required. Consider the total impact of this control method on the environment.

E. Alternative of No Control.

Discuss the probable effects of not taking any active measures. Particular consideration should be given to short- and long-term effects regarding the productivity of the environment.

IV. Based upon evaluation of all alternatives, which control method is proposed and why?

A. If pesticide, identify proposed control product by trade and chemical name.

B. Discuss factors which resulted in choice of control method (e.g., benefits vs. risks, costs, etc.).

V. What is the legal status of the pesticide?

A. Is the product EPA registered?

1. What is EPA registration number?

2. What label directions apply to the intended use?

B. Is the product used under a temporary or experimental use permit?

1. If so, is the permit issued by EPA or a State (identify)?

2. What is permit number and date of issue?

C. Is the product manufactured by or for yourself?

1. If so, a complete formula should be given by chemical names.

2. Manufacturing methods and quality controls should be defined.

3. A copy of the product label should be attached to the EIS.

D. Describe any tests your agency would make to determine the quality and identity of the pesticide in use.

E. Will the proposed pesticide use comply with all applicable Federal, State and local regulations?

VI. What safety precautions will be taken regarding personnel exposure and accidental environmental contamination (spills, etc.) resulting from the pesticide use?

VII. How will final evaluation of goal accomplishments be made and reported?

VIII. Discuss support and/or any oppositions to the proposed actions which have been raised by any Federal, State or local agency, private or public organizations, industry or individuals.

Date developed in response to the above questions should permit an objective review of a pesticide oriented Environmental Impact Statement.

REGIONAL REVIEW PROCEDURES

SECTION V

Accompanying each EPA review is a project rating which briefly describes EPA's assessment of the environmental impacts associated with the proposed action or project. Because this "project rating" is based largely on the material presented in the statement a second rating is given evaluating the adequacy of the EIS. The following is a copy of the rating system used by EPA with brief definitions of each rating category.

RATING SYSTEM

1. Project rating (LO, ER, or EU).

   LO (Lack of Objections). EPA has no objections to the proposed action as described in the draft impact statement or suggests only minor changes in the proposed action.

   ER (Environmental Reservations). EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these aspects.

   EU (Environmentally Unsatisfactory). EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

2. Adequacy of document (1, 2, or 3).

   Category 1 (Adequate). The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

   Category 2 (Insufficient Information). EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

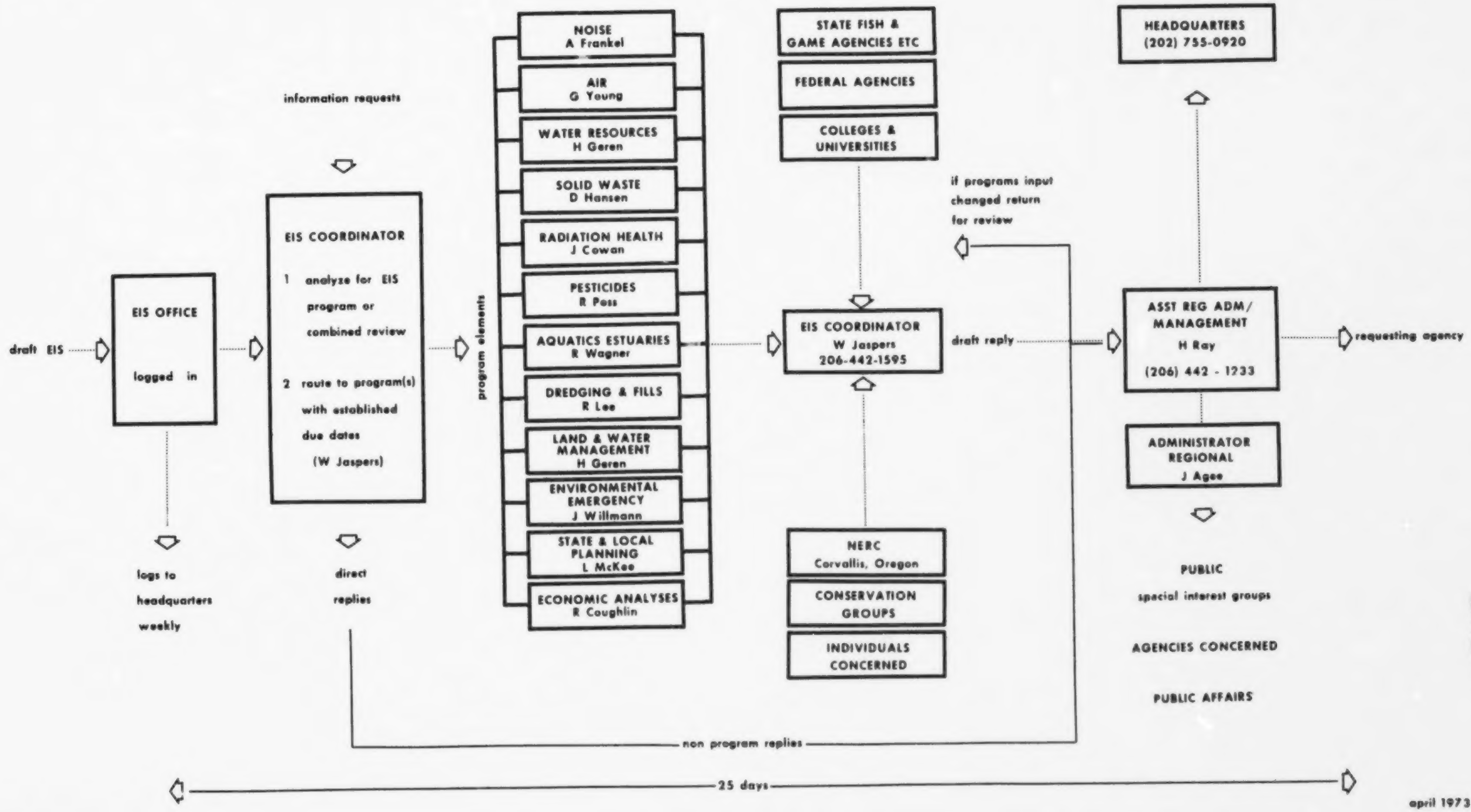
   Category 3 (Inadequate). EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonably available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

CHART NO I

PROCEDURES FOR REVIEWING IMPACT STATEMENTS

U S ENVIRONMENTAL PROTECTION AGENCY

REGION X


draft EIS
EIS OFFICE
logged in
logs to headquarters weekly
information requests
EIS COORDINATOR
1 analyze for EIS program or combined review
2 route to program(s) with established due dates
(W Jaspers)
direct replies
program elements
NOISE
A Frankel
AIR
G Young
WATER RESOURCES
H Geren
SOLID WASTE
D Hansen
RADIATION HEALTH
J Cowan
PESTICIDES
R Poss
AQUATICS ESTUARIES
R Wagner
DREDGING & FILLS
R Lee
LAND & WATER MANAGEMENT
H Geren
ENVIRONMENTAL EMERGENCY
J Willmann
STATE & LOCAL PLANNING
L McKee
ECONOMIC ANALYSES
R Coughlin
STATE FISH & GAME AGENCIES ETC
FEDERAL AGENCIES
COLLEGES & UNIVERSITIES
EIS COORDINATOR
W Jaspers
206-442-1595
NERC
Corvallis, Oregon
CONSERVATION GROUPS
INDIVIDUALS CONCERNED
if programs input changed return for review
draft reply
HEADQUARTERS
(202) 755-0920
ASST REG ADM/ MANAGEMENT
H Ray
(206) 442 - 1233
requesting agency
ADMINISTRATOR REGIONAL
J Agee
PUBLIC
special interest groups
AGENCIES CONCERNED
PUBLIC AFFAIRS
non program replies
25 days

april 1973

ATTACHMENTS

SECTION VI

ATTACHMENT A

CLEAN AIR AMENDMENTS OF 1970
PUB. LAW 91-604

124<

Public Law 91-604
91st Congress, H. R. 17255
December 31, 1970

An Act

84 STAT. 1676

To amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Air Amendments of 1970".

Clean Air Amendments of 1970.

RESEARCH

SEC. 2. (a) Section 103 of the Clean Air Act (42 U.S.C. 1857, et seq.) is amended by adding at the end thereof the following new subsection:

81 Stat. 486.
42 USC 1857b.

"(f)(1) In carrying out research pursuant to this Act, the Administrator shall give special emphasis to research on the short- and long-term effects of air pollutants on public health and welfare. In the furtherance of such research, he shall conduct an accelerated research program—

"(A) to improve knowledge of the contribution of air pollutants to the occurrence of adverse effects on health, including, but not limited to, behavioral, physiological, toxicological, and biochemical effects; and

"(B) to improve knowledge of the short- and long-term effects of air pollutants on welfare.

"(2) In carrying out the provisions of this subsection the Administrator may—

"(A) conduct epidemiological studies of the effects of air pollutants on mortality and morbidity;

"(B) conduct clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects including carcinogenic, teratogenic, and mutagenic effects of air pollutants;

"(C) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers;

"(D) utilize the authority contained in paragraphs (1) through (4) of subsection (b); and

"(E) consult with other appropriate Federal agencies to assure that research or studies conducted pursuant to this subsection will be coordinated with research and studies of such other Federal agencies.

"(3) In entering into contracts under this subsection, the Administrator is authorized to contract for a term not to exceed 10 years in duration. For the purposes of this paragraph, there are authorized to be appropriated $15,000,000. Such amounts as are appropriated shall remain available until expended and shall be in addition to any other appropriations under this Act."

(b) Section 104(a)(1) of the Clean Air Act is amended to read as follows: 42 USC 1857b-1.

"(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for—

"(A) control of combustion byproducts of fuels,

"(B) removal of potential air pollutants from fuels prior to combustion,

"(C) control of emissions from the evaporation of fuels,

"(D) improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and

"(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions."

81 Stat. 487. 42 USC 1857b-1. (c) Section 104(a)(2) of the Clean Air Act is amended by striking "and (B)" and inserting in lieu thereof the following: "(B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D)".

STATE AND REGIONAL GRANT PROGRAMS

42 USC 1857c. SEC. 3. (a) Section 105(a)(1) of the Clean Air Act is amended to read as follows:

"GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS

"SEC. 105. (a)(1)(A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

"(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of 42 USC 1857h. paragraph (1), (2), or (4) of section 302(b) in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municipalities, whether in the same or different States.

"(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 110, grants under subparagraph (B) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan."

(b)(1) Section 105 of the Clean Air Act is further amended by adding at the end thereof the following new subsection:

"(d) The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the 42 USC 1857g. recipient under section 301 of this Act, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this Act. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency."

(2) Section 301(b) of the Clean Air Act is amended (A) by striking out "Public Health Service" and inserting in lieu thereof "Environmental Protection Agency" and (B) by striking out the second sentence thereof.

42 USC 1857c-1. (c) Section 106 of the Clean Air Act is amended to read as follows:

"INTERSTATE AIR QUALITY AGENCIES OR COMMISSIONS

"SEC. 106. For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section Post, p. 1678. 107, the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of such agency."

AMBIENT AIR QUALITY AND EMISSION STANDARDS

SEC. 4. (a) The Clean Air Act is amended by striking out section 107; by redesignating sections 108, 109, 110, and 111 as 115, 116, 117, and 118, respectively; and by inserting after section 106 the following new sections:

81 Stat. 490.
42 USC 1857c-2.
42 USC 1857d-1857f.

"AIR QUALITY CONTROL REGIONS

"SEC. 107. (a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

"(b) For purposes of developing and carrying out implementation plans under section 110— Post, p. 1680.

"(1) an air quality control region designated under this section before the date of enactment of the Clean Air Amendments of 1970, or a region designated after such date under subsection (c), shall be an air quality control region; and

"(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

"(c) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

"AIR QUALITY CRITERIA AND CONTROL TECHNIQUES

Air pollutant list, publication.

"SEC. 108. (a)(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after the date of enactment of the Clean Air Amendments of 1970 publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

"(A) which in his judgment has an adverse effect on public health or welfare;

"(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

"(C) for which air quality criteria had not been issued before the date of enactment of the Clean Air Amendments of 1970, but for which he plans to issue air quality criteria under this section.

"(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

"(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

"(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

"(C) any known or anticipated adverse effects on welfare.

"(b)(1) Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the technology and costs of emission control. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

Standing consulting committees, establishment.

"(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

"(c) The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section.

Publication in Federal Register.

"(d) The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

"NATIONAL AMBIENT AIR QUALITY STANDARDS

"SEC. 109. (a)(1) The Administrator—

"(A) within 30 days after the date of enactment of the Clean Air Amendments of 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date of enactment; and

"(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

"(2) With respect to any air pollutant for which air quality criteria are issued after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

"(b)(1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

"(2) Any national secondary ambient air quality standard prescribed under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

"IMPLEMENTATION PLANS

"SEC. 110. (a)(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

Ante, p. 1679.

"(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

"(A)(i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

"(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

"(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

Review.

"(D) it includes a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

"(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

"(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 303, and adequate contingency plans to implement such authority;

"(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

"(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

"(3) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

"(4) The procedure referred to in paragraph (2)(D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under section 111 will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

Extension.

"(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

Proposed regulations, publication.

"(c) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

"(1) the State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

"(2) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

"(3) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H).

Hearings.

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

"(d) For purposes of this Act, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) or promulgated under subsection (c) and which implements a national primary or secondary ambient air quality standard in a State.

"(e)(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a)(2)(A)(i) for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

"(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

"(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

"(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

"(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period, and

"(B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

"(f)(1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applicability of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

"(A) good faith efforts have been made to comply with such requirement before such date,

"(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time,

"(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

"(D) the continued operation of such source is essential to national security or to the public health or welfare,

then the Administrator shall grant a postponement of such requirement.

Notice, hearing.

"(2)(A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

Judicial review.

"(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States court of appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in such court the record upon which the final decision complained of was issued, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D) of paragraph (1)) shall be sustained if based upon a fair evaluation of the entire record at such hearing.

72 Stat. 941; 80 Stat. 1323.

"(C) Proceedings before the court under this paragraph shall take precedence over all the other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

Post, p. 1707.

"(D) Section 307(a) (relating to subpenas) shall be applicable to any proceeding under this subsection.

"STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Definitions.

"SEC. 111. (a) For purposes of this section:

"(1) The term 'standard of performance' means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated.

"(2) The term 'new source' means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

"(3) The term 'stationary source' means any building, structure, facility, or installation which emits or may emit any air pollutant.

"(4) The term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

"(5) The term 'owner or operator' means any person who owns, leases, operates, controls, or supervises a stationary source.

"(6) The term 'existing source' means any stationary source other than a new source.

List of categories, publication.

"(b)(1)(A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare.

"(B) Within 120 days after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall propose regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within 90 days after such publication, such standards with such modifications as he deems appropriate. The Administrator may, from time to time, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance or revisions thereof shall become effective upon promulgation.

"(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

"(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

"(4) The provisions of this section shall apply to any new source owned or operated by the United States.

"(c)(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards (except with respect to new sources owned or operated by the United States).

"(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

"(d)(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 110 under which each State shall submit to the Administrator a plan which (A) establishes emission standards for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or 112 (b)(1)(A) but (ii) to which a standard of performance under subsection (b) would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such emission standards.

Ante, p. 1680.

Ante, p. 1678;
Post, p. 1685.

"(2) The Administrator shall have the same authority—

"(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 110(c) in the case of failure to submit an implementation plan, and

"(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 113 and 114 with respect to an implementation plan.

Post, p. 1686.

"(e) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

"NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Definitions.

"SEC. 112. (a) For purposes of this section—

"(1) The term 'hazardous air pollutant' means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"(2) The term 'new source' means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

"(3) The terms 'stationary source', 'modification', 'owner or operator' and 'existing source' shall have the same meaning as such terms have under section 111(a).

Ante, p. 1683.

List, publication.

"(b)(1)(A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

Proposed regulations; hearing.

"(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

"(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

"(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutants subject to the provisions of this section.

"(c)(1) After the effective date of any emission standard under this section—

"(A) no person may construct any new source or modify any existing source which, in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

"(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

"(i) such standard shall not apply until 90 days after its effective date, and

"(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

Presidential exemption.

"(2) The President may exempt any stationary source from compliance with paragraph (1) for a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of

Extension.

national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

Report to Congress.

"(d) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards (except with respect to stationary sources owned or operated by the United States).

"(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard under this section.

"FEDERAL ENFORCEMENT

Violations.

"SEC. 113. (a) (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b).

Compliance order.

"(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as 'period of federally assumed enforcement'), the Administrator may enforce any requirement of such plan with respect to any person—

"(A) by issuing an order to comply with such requirement, or

"(B) by bringing a civil action under subsection (b).

"(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111 (e) (relating to new source performance standards) or 112(c) (relating to standards for hazardous emissions), or is in violation of any requirement of section 114 (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b).

Ante, pp. 1684, 1685.

Post, p. 1687.

"(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

"(b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

"(1) violates or fails or refuses to comply with any order issued under subsection (a); or

"(2) violates any requirement of an applicable implementation plan during any period of Federally assumed enforcement more than 30 days after having been notified by the Administrator under subsection (a)(1) of a finding that such person is violating such requirement; or

Ante, pp. 1683, 1685.

"(3) violates section 111(e) or 112(c); or

Infra.

"(4) fails or refuses to comply with any requirement of section 114.

Notice; U. S. district court.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

Penalty.

"(c)(1) Any person who knowingly—

"(A) violates any requirement of an applicable implementation plan during any period of Federally assumed enforcement more than 30 days after having been notified by the Administrator under subsection (a)(1) that such person is violating such requirement, or

"(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a), or

"(C) violates section 111(e) or section 112(c).

shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

"(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

"INSPECTIONS, MONITORING, AND ENTRY

Ante, p. 1680.

Post, p. 1705.

"SEC. 114. (a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, or any emission standard under section 112, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out section 303—

"(1) the Administrator may require the owner or operator of any emission source to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require; and

"(2) the Administrator or his authorized representative, upon presentation of his credentials—

"(A) shall have a right of entry to, upon, or through any premises in which an emission source is located or in which any records required to be maintained under paragraph (1) of this section are located, and

"(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which the owner or operator of such source is required to sample under paragraph (1).

Authority, delegation to State.

"(b)(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section (except with respect to new sources owned or operated by the United States).

"(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

Confidential information.

"(c) Any records, reports or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act."

62 Stat. 791.

81 Stat. 491.
42 USC 1857d.
Ante, p. 1678.

(b) Section 115 of the Clean Air Act (as so redesignated by subsection (a) of this section) is amended as follows:

(1) Strike out the section heading and inserting in lieu thereof "ABATEMENT BY MEANS OF CONFERENCE PROCEDURE IN CERTAIN CASES".

(2) Insert "and which is covered by subsection (b) or (c)" after "persons" in subsection (a).

(3) Strike out subsections (b), (c), and (k).

(4) Redesignate subsections (d)(1) (A), (B), and (C) as paragraphs (1), (2), and (3) of subsection (b), respectively.

(5) Insert after subsection (b)(3) (as so redesignated) the following:

"(4) A conference may not be called under this subsection with respect to an air pollutant for which (at the time the conference is called) a national primary or secondary ambient air quality standard is in effect under section 109."

Ante, p. 1679.

(6) Redesignate subsection (d)(1)(D) as subsection (c), and strike out "subparagraph" each place it appears therein and insert in lieu thereof "subsection".

(7) Redesignate subsections (d)(2) and (d)(3) as subsections (d)(1) and (d)(2), respectively.

(8) Strike out "such conference" in subsection (d)(1) (as so redesignated) and inserting in lieu thereof "any conference under this section".

(9) Strike out "under subparagraph (D) of subsection (d)" in subsection (g)(1) and inserting in lieu thereof "subsection (c)".

42 USC 1857d.

(10) Add at the end thereof the following new subsection:

"(k) No order or judgment under this section, or settlement, compromise, or agreement respecting any action under this section (whether or not entered or made before the date of enactment of the Clean Air Amendments of 1970) shall relieve any person of any obligation to comply with any requirement of an applicable implementation plan, or with any standard prescribed under section 111 or 112."

Ante, pp. 1683, 1685.
81 Stat. 486.
42 USC 1857b.

(2) Section 103(e) of the Clean Air Act is amended by striking out "section 108(a)" and inserting in lieu thereof "section 115"; and by striking out "subsections (d), (e), and (f) of section 108" and inserting in lieu thereof "subsections (b), (c), (d), (e), and (f) of section 115".

81 Stat. 497;
Ante, p. 1678.
42 USC 1857d-1.

(c) Section 116 of the Clean Air Act (as so redesignated by subsection (a) of this section) is amended to read as follows:

"RETENTION OF STATE AUTHORITY

81 Stat. 501.
42 USC 1857f-6a.
Post, pp. 1694, 1698, 1704.

"Sec. 116. Except as otherwise provided in sections 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section."

81 Stat. 498.
42 USC 1857e.

(d) The Clean Air Act is amended by adding at the end of section 117 (as so redesignated by subsection (a) of this section) the following new subsection:

"(f) Prior to—

"(1) issuing criteria for an air pollutant under section 108(a)(2),

"(2) publishing any list under section 111(b)(1)(A) or 112(b)(1)(A),

"(3) publishing any standard under section 111(b)(1)(B) or section 112(b)(1)(B), or

Post, p. 1690.

"(4) publishing any regulation under section 202(a),

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts, and Federal departments and agencies."

FEDERAL FACILITIES

81 Stat. 499.
42 USC 1857f.

Sec. 5. Section 118 of the Clean Air Act (as so redesignated by section 4(a) of this Act) is amended to read as follows:

"CONTROL OF POLLUTION FROM FEDERAL FACILITIES

"Sec. 118. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. The

Exemption.

President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 111, and an exemption from section 112 may be granted only in accordance with section 112(c). No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption."

Ante, pp. 1683, 1685.

Report to Congress.

MOTOR VEHICLE EMISSION STANDARDS

SEC. 6. (a) Section 202 of the Clean Air Act is amended to read as follows:

81 Stat. 499.
42 USC 1857f-1.

"ESTABLISHMENT OF STANDARDS

"SEC. 202. (a) Except as otherwise provided in subsection (b)—

Air pollutant emissions.

"(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment causes or contributes to, or is likely to cause or to contribute to, air pollution which endangers the public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d)), whether such vehicles and engines are designed as complete systems or incorporated devices to prevent or control such pollution.

"(2) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

"(b)(1)(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light duty vehicles and engines manufactured during or after model year 1975 shall contain standards which require a reduction of at least 90 per centum from emissions of carbon monoxide and hydrocarbons allowable under the standards under this section applicable to light duty vehicles and engines manufactured in model year 1970.

Model year 1975, reduction requirement.

"(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light duty vehicles and engines manufactured during or after model year 1976 shall contain standards which require a reduction of at least 90 per centum from the average of emissions of oxides of nitrogen actually measured from light duty vehicles manufactured during model year 1971 which are not subject to any Federal or State emission standard for oxides of nitrogen. Such average of emissions shall be determined by the Administrator on the basis of measurements made by him.

Model year 1976, reduction requirement.

"(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to the date of enactment of the Clean Air Amendments of 1970), shall be prescribed by regulation within 180 days after such date.

Promulgation, date.

"(3) For purposes of this part—

"Model year."

"(A)(i) The term 'model year' with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term 'model year' shall mean the calendar year.

"(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the Administrator may prescribe regulations defining 'model year' otherwise than as provided in clause (i).

"Light duty vehicles and engines."

"(B) The term 'light duty vehicles and engines' means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

Report to Congress.

"(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this Act. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 307(a) (relating to subpenas) shall apply.

Post, p. 1707.

Standards, effective date suspension; application.

"(5)(A) At any time after January 1, 1972, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A)) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1975.

"(B) At any time after January 1, 1973, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(B) with respect to such manufacturer. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(B)) to emissions of oxides of nitrogen from such vehicles and engines manufactured during model year 1976.

Interim standards.

"(C) Any interim standards prescribed under this paragraph shall reflect the greatest degree of emission control which is achievable by application of technology which the Administrator determines is available, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers.

Hearing.

"(D) Within 60 days after receipt of the application for any such suspension, and after public hearing, the Administrator shall issue a decision granting or refusing such suspension. The Administrator shall grant such suspension only if he determines that (i) such suspension is essential to the public interest or the public health and welfare of the United States, (ii) all good faith efforts have been made to meet the standards established by this subsection, (iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for a sufficient period of time to achieve compliance prior to the effective date of such standards, and (iv) the study and investigation of the National Academy of Sciences conducted pursuant to subsection (c) and other information available to him has not indicated that technology, processes, or other alternatives are available to meet such standards.

Prohibition.

"(E) Nothing in this paragraph shall extend the effective date of any emission standard required to be prescribed under this subsection for more than one year.

Feasibility study, funds.

"(c)(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

"(2) Of the funds authorized to be appropriated to the Administrator by this Act, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

Reports to Administrator and Congress.

"(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

Information, availability.

"(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this Act (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

Useful life of vehicle.

Ante, p. 1690; *Post*, p. 1696.

"(d) The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 207. Such regulations shall provide that useful life shall—

"(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or of fifty thousand miles (or the equivalent), whichever first occurs; and

"(2) in the case of any other motor vehicle or motor vehicle engine, be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate.

Post, p. 1694.

"(e) In the event a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 206(a), the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers the public health or welfare but for which standards have not been prescribed under subsection (a)."

ENFORCEMENT OF MOTOR VEHICLE EMISSION STANDARDS

Prohibited acts.
81 Stat. 409.
42 USC 1857f-2.

SEC. 7. (a) (1) Section 203(a) (1) of the Clean Air Act is amended to read as follows:

"(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part (except as provided in subsection (b));"

Infra.

(2) Section 203(a) (2) of such Act is amended by striking out "section 207" and inserting in lieu thereof "section 208", and by striking out "or" at the end thereof.

(3) Section 203(a) (3) of such Act is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or".

(4) Section 203(a) of such Act is amended by inserting at the end thereof the following new paragraph:

"(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 202—

Ante, p. 1690.

"(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with the requirements of section 207 (a) and (b) with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 207(c) (3), or

Post, p. 1696.

"(B) to fail or refuse to comply with the requirements of section 207 (c) or (e)."

(5) Section 203(b) (1) of such Act is amended by striking out ", or class thereof, from subsection (a)," and inserting in lieu thereof "from subsection (a)", and by striking out "to protect the public health or welfare,".

(6) Section 203(b) (2) of such Act is amended by striking out "importation by a manufacturer" and inserting in lieu thereof "importation or imported by any person".

(7) Section 203 of the Clean Air Act is amended—

(A) by amending subsection (b) (3) to read as follows:

Vehicles for export.

"(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a), except that if the country of export has emission standards which differ from the standards prescribed under subsection (a), then such vehicle or engine shall comply with the standards of such country of export."; and

(B) by adding at the end thereof the following new subsection:

Exemption.

"(c) Upon application therefor, the Administrator may exempt from section 203(a) (3) any vehicles (or class thereof) manufactured before the 1974 model year from section 203(a) (3) for the purpose of permitting modifications to the emission control device or system of such vehicle in order to use fuels other than those specified in certification testing under section 206(a)(1), if the Administrator, on the basis of information submitted by the applicant, finds that such modification will not result in such vehicle or engine not complying with standards under section 202 applicable to such vehicle or engine. Any such exemption shall identify (1) the vehicle or vehicles so exempted, (2) the specific nature of the modification, and (3) the person or class of persons to whom the exemption shall apply."

Infra.

Ante, p. 1690.

(b) Section 204(a) of such Act is amended by striking out "or (3)" and inserting in lieu thereof "(3), or (4)".

81 Stat. 500.
42 USC 1857f-3.

(c) Section 205 of such Act is amended to read as follows:

"PENALTIES

"SEC. 205. Any person who violates paragraph (1), (2), (3), or (4) of section 203(a) shall be subject to a civil penalty of not more than $10,000. Any such violation with respect to paragraph (1), (2), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine."

Ante, p. 1693.

COMPLIANCE WITH MOTOR VEHICLE EMISSION STANDARDS

SEC. 8. (a) The Clean Air Act is amended by striking out sections 206 and 211; by redesignating sections 207, 208, 209, 210, and 212 as 208, 209, 210, 211, and 213, respectively; and by inserting after section 205 the following new sections:

42 USC 1857f-5
to 1857f-7.

"MOTOR VEHICLE AND MOTOR VEHICLE ENGINE COMPLIANCE TESTING AND CERTIFICATION

"SEC. 206. (a)(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 202 of this Act. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe.

"(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 202(b) of this Act. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

"(b)(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

"(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations, he shall issue a certificate of conformity applicable to such vehicle or engine.

"(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations, and he shall so notify the manufacturer.

Hearing.

"(B)(i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

Judicial review.

"(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28 of the United States Code.

72 Stat. 941.

Additional evidence.

"(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

"(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter.

80 Stat. 392.
5 USC 701.

Inspection.

"(c) For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

Regulation.

"(d) The Administrator shall by regulation establish methods and procedures for making tests under this section.

Publication in Federal Register.

"(e) The Administrator shall announce in the Federal Register and make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) as promptly as possible after the enactment of the Clean Air Amendments of 1970 and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 202 of this Act.

Ante, p. 1690.

"COMPLIANCE BY VEHICLES AND ENGINES IN ACTUAL USE

Warranty.

"SEC. 207. (a) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after the date of the enactment of the Clean Air Act Amendments of 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (1) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 202, and (2) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 202(d)).

"(b) If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its useful life (as determined under section 202(d)), each vehicle and engine to which regulations under section 202 apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 206(a)(1), then—

Ante, p. 1694.

"(1) he shall establish such methods and procedures by regulation, and

"(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 202 applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

"(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3),

"(B) it fails to conform at any time during its useful life (as determined under section 202(d)) to the regulations prescribed under section 202, and

"(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer.

"(c) Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after the date of enactment of the Clean Air Amendments of 1970—

Ante, p. 1690.

"(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 202, when in actual use throughout their useful life (as determined under section 202(d)), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

"(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

"(3) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine such written instructions for the maintenance and use of the vehicle or engine by the ultimate purchaser as may be reasonable and necessary to assure the proper functioning of emission control devices and systems. In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 202. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

"(d) Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

Cost, statement.

"(e) If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311.

"(f) Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c)(1), after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program."

(b) The amendments made by this section shall not apply to vehicles or engines imported into the United States before the sixtieth day after the date of enactment of this Act.

REGULATION OF FUELS

SEC. 9. (a) Section 211 of the Clean Air Act (as so redesignated by section 8) is amended to read as follows:

Ante, p. 1694.

"REGULATION OF FUELS

"SEC. 211. (a) The Administrator may by regulation designate any fuel or fuel additive and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

"(b)(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

"(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

"(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

"(2) For the purpose of registration of fuels and fuel additives, the Administrator may also require the manufacturer of any fuel or fuel additive—

"(A) to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

"(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

"(3) Upon compliance with the provision of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

"(c)(1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine (A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

"(2)(A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 202.

Ante, p. 1690.

"(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

"(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

"(3)(A) For the purpose of evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

Post, p. 1707.

"(B) In obtaining information under subparagraph (A), section 307(a) (relating to subpenas) shall be applicable.

"(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

Publication in Federal Register.

"(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or

"(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

Ante, p. 1694.

"(B) Any State for which application of section 209(a) has at any time been waived under section 209(b) may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

Ante, p. 1680.

"(C) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

"(d) Any person who violates subsection (a) or the regulations prescribed under subsection (c) or who fails to furnish any information required by the Administrator under subsection (c) shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications." Penalty.

OTHER AMENDMENTS TO TITLE II

SEC. 10. (a) The first sentence of section 208(b) of the Clean Air Act (as so redesignated by section 8 of this Act) is amended to read Ante, p. 1694. as follows: "Any records, reports or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be 62 Stat. 791. disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act."

(b) Section 210 of such Act (as so redesignated by section 8 of this Act) is amended to read as follows: Ante, p. 1694.

"STATE GRANTS

"SEC. 210. The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that— Exceptions.

"(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

"(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of title 23 of the United States Code; and 80 Stat. 731.

"(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative."

(c) Title II of the Clean Air Act is amended by inserting after section 211 (as so redesignated by section 8) the following new section: Ante, p. 1694.

149<

"DEVELOPMENT OF LOW-EMISSION VEHICLES

Definitions. "SEC. 212. (a) For the purpose of this section—

"(1) The term 'Board' means the Low-Emission Vehicle Certification Board.

"(2) The term 'Federal Government' includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

"(3) The term 'motor vehicle' means any self-propelled vehicle designed for use in the United States on the highways, other than a vehicle designed or used for military field training, combat, or tactical purposes.

"(4) The term 'low-emission vehicle' means any motor vehicle which—

Ante, p. 1690. "(A) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 202 at the time of procurement to that type of vehicle; and

"(B) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 202 at the time of procurement to that type of vehicle.

"(5) The term 'retail price' means (A) the maximum statutory price applicable to any class or model of motor vehicle; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any class or model of motor vehicle.

Low-Emission Vehicle Certification Board. Membership. "(b)(1) There is established a Low-Emission Vehicle Certification Board to be composed of the Administrator or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Safety Bureau in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman.

Compensation. Travel expenses. 83 Stat. 190. "(2) Any member of the Board not employed by the United States may receive compensation at the rate of $125 for each day such member is engaged upon work of the Board. Each member of the Board shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

Additional personnel. Ante, p. 198-1. "(3)(A) The Chairman, with the concurrence of the members of the Board, may employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Board, but no individual so appointed shall receive compensation in excess of the rate authorized for GS–18 by section 5332 of title 5, United States Code.

"(B) The Chairman may fix the time and place of such meetings as may be required, but a meeting of the Board shall be called whenever a majority of its members so request.

"(C) The Board is granted all other powers necessary for meeting its responsibilities under this section.

"(c) The Administrator shall determine which models or classes of motor vehicles qualify as low-emission vehicles in accordance with the provisions of this section.

Motor vehicle certification. "(d)(1) The Board shall certify any class or model of motor vehicles—

"(A) for which a certification application has been filed in accordance with paragraph (3) of this subsection;

"(B) which is a low-emission vehicle as determined by the Administrator; and

"(C) which it determines is suitable for use as a substitute for a class or model of vehicles at that time in use by agencies of the Federal Government.

Substitute specifications.

The Board shall specify with particularity the class or model of vehicles for which the class or model of vehicles described in the application is a suitable substitute. In making the determination under this subsection the Board shall consider the following criteria:

Criteria.

"(i) the safety of the vehicle;
"(ii) its performance characteristics;
"(iii) its reliability potential;
"(iv) its serviceability;
"(v) its fuel availability;
"(vi) its noise level; and
"(vii) its maintenance costs as compared with the class or model of motor vehicle for which it may be a suitable substitute.

Effective date, period.

"(2) Certification under this section shall be effective for a period of one year from the date of issuance.

Application.

"(3)(A) Any party seeking to have a class or model of vehicle certified under this section shall file a certification application in accordance with regulations prescribed by the Board.

Publication in Federal Register.

"(B) The Board shall publish a notice of each application received in the Federal Register.

"(C) The Administrator and the Board shall make determinations for the purpose of this section in accordance with procedures prescribed by regulation by the Administrator and the Board, respectively.

Investigation and inspection.

"(D) The Administrator and the Board shall conduct whatever investigation is necessary, including actual inspection of the vehicle at a place designated in regulations prescribed under subparagraph (A).

Comments, evaluation.

"(E) The Board shall receive and evaluate written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of vehicle under consideration.

"(F) Within 90 days after the receipt of a properly filed certification application, the Administrator shall determine whether such class or model of vehicle is a low-emission vehicle, and within 180 days of such determination, the Board shall reach a decision by majority vote as to whether such class or model of vehicle, having been determined to be a low-emission vehicle, is a suitable substitute for any class or classes of vehicles presently being purchased by the Federal Government for use by its agencies.

Publication in Federal Register.

"(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator and the Board shall each publish in the Federal Register notice of such determination or decision, including reasons therefor and in the case of the Board any dissenting views.

Acquisition by Federal government.

"(e)(1) Certified low-emission vehicles shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other vehicles if the Administrator of General Services determines that such certified vehicles have procurement costs which are no more than 150 per centum of the retail price of the least expensive class or model of motor vehicle for which they are certified substitutes.

Premium raise.

"(2) In order to encourage development of inherently low-polluting propulsion technology, the Board may, at its discretion, raise the premium set forth in paragraph (1) of this subsection to 200 per centum of the retail price of any class or model of motor vehicle for which a certified low-emission vehicle is a certified substitute, if the Board determines that the certified low-emission vehicle is powered by an inherently low-polluting propulsion system.

"(3) Data relied upon by the Board and the Administrator in determining that a vehicle is a certified low-emission vehicle shall be incorporated in any contract for the procurement of such vehicle.

"(f) The procuring agency shall be required to purchase available certified low-emission vehicles which are eligible for purchase to the extent they are available before purchasing any other vehicles for which any low-emission vehicle is a certified substitute. In making purchasing selections between competing eligible certified low-emission vehicles, the procuring agency shall give priority to (1) any class or model which does not require extensive periodic maintenance to retain its low-polluting qualities or which does not require the use of fuels which are more expensive than those of the classes or models of vehicles for which it is a certified substitute; and (2) passenger vehicles other than buses.

"(g) For the purpose of procuring certified low-emission vehicles any statutory price limitations shall be waived.

"(h) The Administrator shall, from time to time as the Board deems appropriate, test the emissions from certified low-emission vehicles purchased by the Federal Government. If at any time he finds that the emission rates exceed the rates on which certification under this section was based, the Administrator shall notify the Board. Thereupon the Board shall give the supplier of such vehicles written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Board, the Board may order the supplier to show cause why the vehicle involved should be eligible for recertification.

Appropriations.

"(i) There are authorized to be appropriated for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section, $5,000,000 for the fiscal year ending June 30, 1971, and $25,000,000 for each of the two succeeding fiscal years.

"(j) The Board shall promulgate the procedures required to implement this section within one hundred and eighty days after the date of enactment of the Clean Air Amendments of 1970."

Ante, p. 1694.

(d)(1) Paragraph (1) of section 213 of the Clean Air Act (as so redesignated by section 8) is amended by inserting "202," immediately before "203,".

(2) Paragraph (3) of such section 213 is amended by striking out "The" and inserting in lieu thereof "Except with respect to vehicles or engines imported or offered for importation, the"; and by adding before the period at the end thereof "; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 202 which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States)".

Ante, p. 1690.

EMISSION STANDARDS FOR AIRCRAFT

81 Stat. 499.
42 USC 1857f-1.

SEC. 11. (a)(1) Title II of the Clean Air Act is amended by adding at the end thereof the following new part:

"PART B—AIRCRAFT EMISSION STANDARDS

"ESTABLISHMENT OF STANDARDS

Study.

"SEC. 231. (a)(1) Within 90 days after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

"(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

"(B) the technological feasibility of controlling such emissions.

"(2) Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare.

Report, publication.

"(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

Hearings.

Regulations.

"(b) Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

Effective date.

"(c) Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety.

"ENFORCEMENT OF STANDARDS

"SEC. 232. (a) The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 231 by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by the Federal Aviation Act or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and, may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

Regulations.

72 Stat. 731.
49 USC 1301 note.
80 Stat. 931.
49 USC 1651 note.

"(b) In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 231 or of a regulation prescribed under subsection (a) is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in the Federal Aviation Act of 1958 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

Certificate holder, notice and appeal rights.

Exception.

"STATE STANDARDS AND CONTROLS

"SEC. 233. No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

"DEFINITIONS

"SEC. 234. Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 101 of the Federal Aviation Act of 1958." 72 Stat. 737. 49 USC 1301.

(2) Title II of the Clean Air Act is amended—

(A) by striking out "this title" wherever it appears in sections 202 through 213 and inserting in lieu thereof "this part"; Ante, p. 1690.

(B) by striking out "TITLE II" in the heading for section 213 (as so redesignated by section 8 of this Act) and inserting in lieu thereof "PART A"; Ante, p. 1694.

(C) by amending the heading for title II to read as follows: "TITLE II—EMISSION STANDARDS FOR MOVING SOURCES"; and 81 Stat. 499. 42 USC 1857f-1.

(D) by inserting after section 201 the following:

"PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS".

(b)(1) Section 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1421) is amended by adding at the end thereof the following new subsection: 72 Stat. 775.

"AVIATION FUEL STANDARDS

"(d) The Administrator shall prescribe, and from time to time revise, regulations (1) establishing standards governing the composition or the chemical or physical properties of any aircraft fuel or fuel additive for the purpose of controlling or eliminating aircraft emissions which the Administrator of the Environmental Protection Agency (pursuant to section 231 of the Clean Air Act) determines endanger the public health or welfare, and (2) providing for the implementation and enforcement of such standards." Ante, p. 1703.

(2) Section 610(a) of such Act (49 U.S.C. 1430(a)) is amended by striking out "and" at the end of paragraph (7); by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and" and by adding after paragraph (8) the following new paragraph:

"(9) For any person to manufacture, deliver, sell, or offer for sale, any aviation fuel or fuel additive in violation of any regulation prescribed under section 601(d)."

(3) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading 72 Stat. 733.

"Sec. 601. General Safety Powers and Duties."

is amended by adding at the end thereof the following:

"(d) Aviation fuel standards.".

GENERAL PROVISIONS

SEC. 12. (a) The Clean Air Act is amended by redesignating sections 303 through 310 as sections 310 through 317, and by inserting after section 302 the following new sections: 81 Stat. 505. 42 USC 1857i-1857l.

"EMERGENCY POWERS

"SEC. 303. Notwithstanding any other provision of this Act, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary.

"CITIZEN SUITS

"SEC. 304. (a) Except as provided in subsection (b), any person may commence a civil action on his own behalf—

"(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

"(b) No action may be commenced—

"(1) under subsection (a)(1)—

"(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

"(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

"(2) under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 112(c)(1)(B) or an order issued by the Administrator pursuant to section 113(a). Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

Ante, p. 1685.
Ante, p. 1686.

"(c)(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

"(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

"(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

28 USC app.

"(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

"(f) For purposes of this section, the term 'emission standard or limitation under this Act' means—

"(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard, or

"(2) a control or prohibition respecting a motor vehicle fuel or fuel additive,

which is in effect under this Act (including a requirement applicable by reason of section 118) or under an applicable implementation plan.

Ante, p. 1689.

"APPEARANCE

"SEC. 305. The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

"FEDERAL PROCUREMENT

Ante, p. 1687.

"SEC. 306. (a) No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c)(1) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected.

"(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

Federal agency contracts.

Presidential procedures, etc.

"(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

Exemptions, notification to Congress.

"(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

Report to Congress.

"(e) The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

"GENERAL PROVISION RELATING TO ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW

Ante, pp. 1682, 1691.

"SEC. 307. (a)(1) In connection with any determination under section 110(f) or section 202(b)(5), or for purposes of obtaining information under section 202(b)(4) or 210(c)(4), the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code,

62 Stat. 791.

except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 202(c), or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Ante, p. 1690.

Petition for review.
Ante, p. 1685.

"(b)(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard under section 112, any standard of performance under section 111, any standard under section 202 (other than a standard required to be prescribed under section 202(b)(1)), any determination under section 202(b)(5), any control or prohibition under section 211, or any standard under section 231 may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 110 or section 111(d) may be filed only in the United States Court of Appeals for the appropriate circuit. Any such petition shall be filed within 30 days from the date of such promulgation or approval, or after such date if such petition is based solely on grounds arising after such 30th day.

Ante, pp. 1698, 1703.

Ante, p. 1680.

Filing.

"(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

Additional evidence.

"(c) In any judicial proceeding in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

"MANDATORY LICENSING

"SEC. 308. Whenever the Attorney General determines, upon application of the Administrator—

"(1) that—

"(A) in the implementation of the requirements of section 111, 112, or 202 of this Act, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

"(B) there are no reasonable alternative methods to accomplish such purpose, and

"(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

Patent licensing.

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

"POLICY REVIEW

"SEC. 309. (a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 102(2)(C) of Public Law 91-190 applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

83 Stat. 853.
42 USC 4332.

"(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality."

APPROPRIATIONS

81 Stat. 488;
83 Stat. 283.

SEC. 13. (a) Section 104(c) of the Clean Air Act is amended to read as follows:

"(c) For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for the fiscal year ending June 30, 1972, and $150,000,000 for the fiscal year ending June 30, 1973. Amounts appropriated pursuant to this subsection shall remain available until expended."

(b) Section 316 of the Clean Air Act (as redesignated by section 12 of this Act) is amended to read as follows:

"APPROPRIATIONS

Ante, p. 1676;
81 Stat. 487.
Ante, pp 1701, 1710.
42 USC 1857b, 1857b-1, 1857f-7.

"SEC. 316. There are authorized to be appropriated to carry out this Act, other than sections 103 (f)(3) and (d), 104, 212, and 403, $125,000,000 for the fiscal year ending June 30, 1971, $225,000,000 for the fiscal year ending June 30, 1972, and $300,000,000 for the fiscal year ending June 30, 1973."

SEC. 14. The Clean Air Act is amended by adding at the end thereof a new title to read as follows:

"TITLE IV—NOISE POLLUTION

"SEC. 401. This title may be cited as the 'Noise Pollution and Abatement Act of 1970'.

"SEC. 402. (a) The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

"(A) effects at various levels;

"(B) projected growth of noise levels in urban areas through the year 2000;

"(C) the psychological and physiological effect on humans;

"(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

"(E) effect on wildlife and property (including values);

"(F) effect of sonic booms on property (including values); and

"(G) such other matters as may be of interest in the public welfare.

"(b) In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after the date of enactment of this title.

"(c) In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.

"Sec. 403. There is authorized to be appropriated such amount, not to exceed $30,000,000, as may be necessary for the purposes of this title." Appropriation.

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 15. (a) (1) Section 302 of the Clean Air Act is amended by striking out subsection (g) and inserting in lieu thereof the following: 81 Stat. 504. 42 USC 1857h.

"(g) The term 'air pollutant' means an air pollution agent or combination of such agents.

"(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

(2) Section 103(c) of the Clean Air Act is amended by striking out "air pollution agents (or combinations of agents)" and inserting in lieu thereof "air pollutants". 42 USC 1857b.

(b) (1) Subject to such requirements as the Civil Service Commission may prescribe, any commissioned officer of the Public Health Service (other than an officer who retires under section 211 of the Public Health Service Act after his election but prior to his transfer pursuant to this paragraph and paragraph (2)) who, upon the day before the effective date of Reorganization Plan Numbered 3 of 1970 (hereinafter in this subsection referred to as the "plan"), is serving as such officer (A) primarily in the performance of functions transferred by such plan to the Environmental Protection Agency or its Administrator (hereinafter in this subsection referred to as the "Agency" and the "Administrator", respectively), may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Agency; or (B) primarily in the performance of functions determined by the Secretary of Health, Education, and Welfare (hereinafter in this subsection referred to as the "Secretary") to be materially related to the functions so transferred, may, if authorized by agreement between the Secretary and the Administrator, and if such officer so elects, acquire such status and be so transferred. 74 Stat. 33. 42 USC 212. 35 F.R. 15623.

(2) An election pursuant to paragraph (1) shall be effective only if made in accordance with such procedures as may be prescribed by the Civil Service Commission (A) before the close of the 24th month after the effective date of the plan, or (B) in the case of a commissioned officer who would be liable for training and service under the Military Selective Service Act of 1967 but for the operation of section 6(b)(3) thereof (50 U.S.C. App. 456(b)(3)), before (if it occurs later than the close of such 24th month) the close of the 90th day after the day upon which he has completed his 24th month of service as such officer.

81 Stat. 100.
50 USC app. 451.
69 Stat. 224.

(3)(A) Except as provided in subparagraph (B), any commissioned officer of the Public Health Service who, pursuant to paragraphs (1) and (2), elects to transfer to a position in the Agency which is subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code (hereinafter in this subsection referred to as the "transferring officer"), shall receive a pay rate of the General Schedule grade of such position which is not less than the sum of the following amounts computed as of the day preceding the date of such election:

80 Stat. 443.
5 USC 5101, 5331.
Ante, p.198-1.

(i) the basic pay, the special pay, the continuation pay, and the subsistence and quarters allowances, to which he is annually entitled as a commissioned officer of the Public Health Service pursuant to title 37, United States Code;

76 Stat. 451.
37 USC 101.

(ii) the amount of Federal income tax, as determined by estimate of the Secretary, which the transferring officer, had he remained a commissioned officer, would have been required to pay on his subsistence and quarters allowances for the taxable year then current if they had not been tax free;

(iii) an amount equal to the biweekly average cost of the coverages designated "high option, self and family" under the Government-wide Federal employee health benefits program plans, multiplied by twenty-six; and

(iv) an amount equal to 7 per centum of the sum of the amounts determined under clauses (i) through (iii), inclusive.

(B) A transferring officer shall in no event receive, pursuant to subparagraph (A), a pay rate in excess of the maximum rate applicable under the General Schedule to the class of position, as established under chapter 51 of title 5, United States Code, to which such officer is transferred pursuant to paragraphs (1) and (2).

(4)(A) A transferring officer shall be credited, on the day of his transfer pursuant to his election under paragraphs (1) and (2), with one hour of sick leave for each week of active service, as defined by section 211(d) of the Public Health Service Act.

74 Stat. 34.
42 USC 212.

(B) The annual leave to the credit of a transferring officer on the day before the day of his transfer, shall, on such day of transfer, be transferred to his credit in the Agency on an adjusted basis under regulations prescribed by the Civil Service Commission. The portion of such leave, if any, that is in excess of the sum of (i) 240 hours, and (ii) the number of hours that have accrued to the credit of the transferring officer during the calendar year then current and which remain unused, shall thereafter remain to his credit until used, and shall be reduced in the manner described by subsection (c) of section 6304 of title 5, United States Code.

80 Stat. 519.

(5) A transferring officer who is required to change his official station as a result of his transfer under this subsection shall be paid such travel, transportation, and related expenses and allowances, as would be provided pursuant to subchapter II of chapter 57 of title 5, United States Code, in the case of a civilian employee so transferred in the interest of the Government. Such officer shall not (either at the time of such transfer or upon a subsequent separation from the competitive service) be deemed to have separated from, or changed permanent

80 Stat. 500.
5 USC 5721.

station within, a uniformed service for purposes of section 404 of title 37, United States Code. 76 Stat. 472; 83 Stat. 840.

(6) Each transferring officer who prior to January 1, 1958, was insured pursuant to the Federal Employees' Group Life Insurance Act of 1954, and who subsequently waived such insurance, shall be entitled to become insured under chapter 87 of title 5, United States Code, upon his transfer to the Agency regardless of age and insurability. 68 Stat. 736. 80 Stat. 592. 5 USC 8701.

(7)(A) Effective as of the date a transferring officer acquires competitive status as an employee of the Agency, there shall be considered as the civilian service of such officer for all purposes of chapter 83, title 5, United States Code, (i) his active service as defined by section 211(d) of the Public Health Service Act, or (ii) any period for which he would have been entitled, upon his retirement as a commissioned officer of the Public Health Service, to receive retired pay pursuant to section 211(a)(4)(B) of such Act; however, no transferring officer may become entitled to benefits under both subchapter III of such chapter and title II of the Social Security Act based on service as such a commissioned officer performed after 1956, but the individual (or his survivors) may irrevocably elect to waive benefit credit for the service under one such law to secure credit under the other. 80 Stat. 557. 5 USC 8301. 74 Stat. 34. 42 USC 212. 53 Stat. 1362; 81 Stat. 833. 42 USC 401.

(B) A transferring officer on whose behalf a deposit is required to be made by subparagraph (C) and who, after transfer to a competitive position in the Agency under paragraphs (1) and (2), is separated from Federal service or transfers to a position not covered by subchapter III of chapter 83 of title 5, United States Code, shall not be entitled, nor shall his survivors be entitled, to a refund of any amount deposited on his behalf in accordance with this section. In the event he transfers, after transfer under paragraphs (1) and (2), to a position covered by another Government staff requirement system under which credit is allowable for service with respect to which a deposit is required under subparagraph (C), no credit shall be allowed under such subchapter III with respect to such service. 80 Stat. 564. 5 USC 8331.

(C) The Secretary shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, on behalf of and to the credit of such transferring officer, an amount equal to that which such individual would be required to deposit in such fund to cover the years of service credited to him for purposes of his retirement under subparagraph (A), had such service been service as an employee as defined in section 8331(1) of title 5, United States Code. The amount so required to be deposited with respect to any transferring officer shall be computed on the basis of the sum of each of the amounts described in paragraph (3)(A) which were received by, or accrued to the benefit of, such officer during the years so credited. The deposits which the Secretary is required to make under this subparagraph with respect to any transferring officer shall be made within two years after the date of his transfer as provided in paragraphs (1) and (2), and the amounts due under this subparagraph shall include interest computed from the period of service credited to the date of payment in accordance with section 8334(e) of title 5, United States Code.

(8)(A) A commissioned officer of the Public Health Service who, upon the day before the effective date of the plan, is on active service therewith primarily assigned to the performance of functions described in paragraph (1)(A), shall, while he remains in active service, as defined by section 211(d) of the Public Health Service Act, be assigned to the performance of duties with the Agency, except as the Secretary and the Administrator may jointly otherwise provide.

(B) Paragraph (2) of section 6(a) of the Military Selective Service Act of 1967 (50 U.S.C. App. 456(a)(2)) is amended by inserting "the Environmental Protection Agency," after "Department of Justice,". 81 Stat. 101.

81 Stat. 504.
42 USC 1857h.
"Administrator."

(c)(1) Section 302(a) of the Clean Air Act is amended to read as follows:

"(a) The term 'Administrator' means the Administrator of the Environmental Protection Agency."

42 USC 1857 note.

(2) The Clean Air Act is amended by striking out "Secretary" wherever it appears (except in reference to the Secretary of a department other than the Department of Health, Education, and Welfare) and inserting in lieu thereof "Administrator"; by striking out "Secretary of Health, Education, and Welfare" wherever it appears, and inserting in lieu thereof "Administrator"; and by striking out "Department of Health, Education, and Welfare" wherever it appears, and inserting in lieu thereof "Environmental Protection Agency".

SAVINGS PROVISIONS

Ante, p. 1680.

SEC. 16. (a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act prior to enactment of this Act may be approved under section 110 of the Clean Air Act (as amended by this Act) and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with the applicable requirements of the Clean Air Act (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act, notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act.

(2) The amendments made by section 4(b) shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act before the date of enactment of this Act.

81 Stat. 499.
42 USC 1857f-1.

(b) Regulations or standards issued under title II of the Clean Air Act prior to the enactment of this Act shall continue in effect until revised by the Administrator consistent with the purposes of such Act.

Approved December 31, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1146 (Comm. on Interstate and Foreign Commerce)
and No. 91-1783 (Comm. of Conference).
SENATE REPORT No. 91-1196 (Comm. on Public Works).
CONGRESSIONAL RECORD, Vol. 116 (1970):
June 10, considered and passed House.
Sept. 21, 22, considered and passed Senate, amended, in lieu of S. 4358.
Dec. 18, Senate and House agreed to conference report.

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ATTACHMENT B

PUBLIC LAW 91-258

Public Law 91-258
91st Congress, H. R. 14465
May 21, 1970

Air and Water Quality

(1) The Secretary shall not approve any project application for a project involving airport location, a major runway extension, or runway location unless the Governor of the State in which such project may be located certifies in writing to the Secretary that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved or where such standards have been promulgated by the Secretary of the Interior or the Secretary of Health, Education, and Welfare, certification shall be obtained from the appropriate Secretary. Notice of certification or of refusal to certify shall be provided within sixty days after the project application is received by the Secretary.

ATTACHMENT C

COUNCIL ON ENVIRONMENTAL QUALITY GUIDELINES

165<

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PART II

COUNCIL ON ENVIRONMENTAL QUALITY

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STATEMENTS ON PROPOSED FEDERAL ACTIONS AFFECTING THE ENVIRONMENT

GUIDELINES

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

COUNCIL ON ENVIRONMENTAL QUALITY

STATEMENTS ON PROPOSED FEDERAL ACTIONS AFFECTING THE ENVIRONMENT

Guidelines

1. *Purpose.* This memorandum provides guidelines to Federal departments, agencies, and establishments for preparing detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment as required by section 102(2)(C) of the National Environmental Policy Act (Public Law 91–190) (hereafter "the Act"). Underlying the preparation of such environmental statements is the mandate of both the Act and Executive Order 11514 (35 F.R. 4247) of March 4, 1970, that all Federal agencies, to the fullest extent possible, direct their policies, plans and programs so as to meet national environmental goals. The objective of section 102(2)(C) of the Act and of these guidelines is to build into the agency decision making process an appropriate and careful consideration of the environmental aspects of proposed action and to assist agencies in implementing not only the letter, but the spirit, of the Act. This memorandum also provides guidance on implementation of section 309 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

2. *Policy.* As early as possible and in all cases prior to agency decision concerning major action or recommendation or a favorable report on legislation that significantly affects the environment, Federal agencies will, in consultation with other appropriate Federal, State, and local agencies, assess in detail the potential environmental impact in order that adverse effects are avoided, and environmental quality is restored or enhanced, to the fullest extent practicable. In particular, alternative actions that will minimize adverse impact should be explored and both the long- and short-range implications to man, his physical and social surroundings, and to nature, should be evaluated in order to avoid to the fullest extent practicable undesirable consequences for the environment.

3. *Agency and OMB procedures.* (a) Pursuant to section 2(f) of Executive Order 11514, the heads of Federal agencies have been directed to proceed with measures required by section 102(2)(C) of the Act. Consequently, each agency will establish, in consultation with the Council on Environmental Quality, not later than June 1, 1970 (and, by July 1, 1971, with respect to requirements imposed by revisions in these guidelines, which will apply to draft environmental statements circulated after June 30, 1971), its own formal procedures for (1) identifying those agency actions requiring environmental statements, the appropriate time prior to decision for the consultations required by section 102(2)(C), and the agency review process for which environmental statements are to be available, (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statements, (4) consulting with and taking account of the comments of appropriate Federal, State, and local agencies, including obtaining the comment of the Administrator of the Environmental Protection Agency, whether or not an environmental statement is prepared, when required under section 309 of the Clean Air Act, as amended, and section 8 of these guidelines, and (5) meeting the requirements of section 2(b) of Executive Order 11514 for providing timely public information on Federal plans and programs with environmental impact including procedures responsive to section 10 of these guidelines. These procedures should be consonant with the guidelines contained herein. Each agency should file seven (7) copies of all such procedures with the Council on Environmental Quality, which will provide advice to agencies in the preparation of their procedures and guidance on the application and interpretation of the Council's guidelines. The Environmental Protection Agency will assist in resolving any question relating to section 309 of the Clean Air Act, as amended.

(b) Each Federal agency should consult, with the assistance of the Council on Environmental Quality and the Office of Management and Budget if desired, with other appropriate Federal agencies in the development of the above procedures so as to achieve consistency in dealing with similar activities and to assure effective coordination among agencies in their review of proposed activities.

(c) State and local review of agency procedures, regulations, and policies for the administration of Federal programs of assistance to State and local governments will be conducted pursuant to procedures established by the Office of Management and Budget Circular No. A–85. For agency procedures subject to OMB Circular No. A–85 a 30-day extension in the July 1, 1971, deadline set in section 3(a) is granted.

(d) It is imperative that existing mechanisms for obtaining the views of Federal, State, and local agencies on proposed Federal actions be utilized to the extent practicable in dealing with environmental matters. The Office of Management and Budget will issue instructions, as necessary, to take full advantage of existing mechanisms (relating to procedures for handling legislation, preparation of budgetary materials, new procedures, water resource and other projects, etc.).

4. *Federal agencies included.* Section 102(2)(C) applies to all agencies of the Federal Government with respect to recommendations or favorable reports on proposals for (i) legislation and (ii) other major Federal actions significantly affecting the quality of the human environment. The phrase "to the fullest extent possible" in section 102(2)(C) is meant to make clear that each agency of the Federal Government shall comply with the requirement unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible. (Section 105 of the Act provides that "The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.")

5. *Actions included.* The following criteria will be employed by agencies in deciding whether a proposed action requires the preparation of an environmental statement:

(a) "Actions" include but are not limited to:

(i) Recommendations or favorable reports relating to legislation including that for appropriations. The requirement for following the section 102(2)(C) procedure as elaborated in these guidelines applies to both (i) agency recommendations on their own proposals for legislation and (ii) agency reports on legislation initiated elsewhere. (In the latter case only the agency which has primary responsibility for the subject matter involved will prepare an environmental statement.) The Office of Management and Budget will supplement these general guidelines with specific instructions relating to the way in which the section 102(2)(C) procedure fits into its legislative clearance process;

(ii) Projects and continuing activities: directly undertaken by Federal agencies; supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of funding assistance; involving a Federal lease, permit, license, certificate or other entitlement for use;

(iii) Policy, regulations, and procedure-making.

(b) The statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be construed by agencies with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated). Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. Proposed actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases. In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many Federal decisions about a project or complex of projects can be individually limited but cumulatively considerable. This can occur when one or more agencies over a period of years puts into a project individually minor but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases or represents a decision in principle about a future major course of action, or when several Government agencies individually make decisions about partial aspects of a major action. The lead agency should prepare an environmental statement if it is reasonable to anticipate a cumulatively significant impact on the environment from Federal action. "Lead agency" refers to the Federal agency which has primary authority for committing the Federal Government to a course of action with signincant environmental impact. As necessary, the Council on Environmental Quality will assist in resolving questions of lead agency determination.

(c) Section 101(b) of the Act indicates the broad range of aspects of the environment to be surveyed in any assessment of significant effect. The Act also indicates that adverse significant effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment, and serve short-term, to the disadvantage of long-term, environmental goals. Significant effects can also include actions which may have both beneficial and detrimental effects, even if, on balance, the agency believes that the effect will be beneficial. Significant adverse effects on the quality of the human environment include both those that directly affect human beings and those that indirectly affect human beings through adverse effects on the environment.

(d) Because of the Act's legislative history, environmental protective regulatory activities concurred in or taken by the Environmental Protection Agency are not deemed actions which require the preparation of environmental statements under section 102(2)(C) of the Act.

6. *Content of environmental statement*. (a) The following points are to be covered:

(i) A description of the proposed action including information and technical data adequate to permit a careful assessment of environmental impact by commenting agencies. Where relevant, maps should be provided.

(ii) The probable impact of the proposed action on the environment, including impact on ecological systems such as wildlife, fish, and marine life. Both primary and secondary significant consequences for the environment should be included in the analysis. For example, the implications, if any, of the action for population distribution or concentration should be estimated and an assessment made of the effect of any possible change in population patterns upon the resource base, including land use, water, and public services, of the area in question.

(iii) Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to health or other consequences adverse to the environmental goals set out in section 101(b) of the Act).

(iv) Alternatives to the proposed action (section 102(2)(D) of the Act requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). A rigorous exploration and objective evaluation of alternative actions that might avoid some or all of the adverse environmental effects is essential. Sufficient analysis of such alternatives and their costs and impact on the environment should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might have less detrimental effects.

(v) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This in essence requires the agency to assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.

(vi) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. This requires the agency to identify the extent to which the action curtails the range of beneficial uses of the environment.

(vii) Where appropriate, a discussion of problems and objections raised by other Federal, State, and local agencies and by private organizations and individuals in the review process and the disposition of the issues involved. (This section may be added at the end of the review process in the final text of the environmental statement.)

(b) With respect to water quality aspects of the proposed action which have been previously certified by the appropriate State or interstate organization as being in substantial compliance with applicable water quality standards, the comment of the Environmental Protection Agency should also be requested.

(c) Each environmental statement should be prepared in accordance with the precept in section 102(2)(A) of the Act that all agencies of the Federal Government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment."

(d) Where an agency follows a practice of declining to favor an alternative until public hearings have been held on a proposed action, a draft environmental statement may be prepared and circulated indicating that two or more alternatives are under consideration.

(e) Appendix 1 prescribes the form of the summary sheet which should accompany each draft and final environmental statement.

7. Federal agencies to be consulted in connection with preparation of environmental statement. A Federal agency considering an action requiring an environmental statement, on the basis of (i) a draft environmental statement for which it takes responsibility or (ii) comparable information followed by a hearing subject to the provisions of the Administrative Procedure Act, should consult with, and obtain the comment on the environmental impact of the action of, Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved. These Federal agencies include components of (depending on the aspect or aspects of the environment):

Advisory Council on Historic Preservation.
Department of Agriculture.
Department of Commerce.
Department of Defense.
Department of Health, Education, and Welfare.
Department of Housing and Urban Development.
Department of the Interior.
Department of State.
Department of Transportation.
Atomic Energy Commission.
Federal Power Commission.
Environmental Protection Agency.
Office of Economic Opportunity.

For actions specifically affecting the environment of their geographic jurisdictions, the following Federal and Federal-State agencies are also to be consulted:

Tennessee Valley Authority.
Appalachian Regional Commission.
National Capital Planning Commission.
Delaware River Basin Commission.
Susquehanna River Basin Commission.

Agencies seeking comment should determine which one or more of the above listed agencies are appropriate to consult on the basis of the areas of expertise identified in Appendix 2 to these guidelines. It is recommended (i) that the above listed departments and agencies establish contact points, which often are most appropriately regional offices, for providing comments on the environmental statements and (ii) that departments from which comment is solicited coordinate and consolidate the comments of their component entities. The requirement in section 102(2)(C) to obtain comment from Federal agencies having jurisdiction or special expertise is in addition to any specific statutory obligation of any Federal agency to coordinate or consult with any other Federal or State agency. Agencies seeking comment may establish time limits of not less than thirty (30) days for reply, after which it may be presumed, unless the agency consulted requests a specified extension of time, that the agency consulted has no comment to make. Agencies seeking comment should endeavor to comply with requests for extensions of time of up to fifteen (15) days.

8. *Interim EPA procedures for implementation of section 309 of the Clean Air Act, as amended*. (a) Section 309 of the Clean Air Act, as amended, provides:

> Sec. 309. (a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 102(2)(C) of Public Law 91-190 applies, and (3) proposed regulations published by any

> department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.
>
> (b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

(b) Accordingly, wherever an agency action related to air or water quality, noise abatement and control, pesticide regulation, solid waste disposal, radiation criteria and standards, or other provisions of the authority of the Administrator if the Environmental Protection Agency is involved, including his enforcement authority, Federal agencies are required to submit for review and comment by the Administrator in writing: (i) proposals for new Federal construction projects and other major Federal agency actions to which section 102(2)(C) of the National Environmental Policy Act applies and (ii) proposed legislation and regulations, whether or not section 102(2)(C) of the National Environmental Policy Act applies. (Actions requiring review by the Administrator do not include litigation or enforcement proceedings.) The Administrator's comments shall constitute his comments for the purposes of both section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act. A period of 45 days shall be allowed for such review. The Administrator's written comment shall be furnished to the responsible Federal department or agency, to the Council on Environmental Quality and summarized in a notice published in the FEDERAL REGISTER. The public may obtain copies of such comment on request from the Environmental Protection Agency.

9. *State and local review.* Where no public hearing has been held on the proposed action at which the appropriate State and local review has been invited, and where review of the environmental impact of the proposed action by State and local agencies authorized to develop and enforce environmental standards is relevant, such State and local review shall be provided as follows:

(a) For direct Federal development projects and projects assisted under programs listed in Attachment D of the Office of Management and Budget Circular No. A–95, review of draft environmental statements by State and local governments will be through procedures set forth under Part 1 of Circular No. A–95.

(b) Where these procedures are not appropriate and where a proposed action affects matters within their jurisdiction, review of the draft environmental statement on a proposed action by State and local agencies authorized to develop and enforce environmental standards and their comments on the environmental impact of the proposed action may be obtained directly or by distributing the draft environmental statement to the appropriate State, regional and metropolitan clearinghouses unless the Governor of the State involved has designated some other point for obtaining this review.

10. *Use of statements in agency review processes; distribution to Council on Environmental Quality; availability to public.* (a) Agencies will need to identify at what stage or stages of a series of actions relating to a particular matter the environmental statement procedures of this directive will be applied. It will often be necessary to use the procedures both in the development of a national program and in the review of proposed projects within the national program. However, where a grant-in-aid program does not entail prior approval by Federal agencies of specific projects the view of Federal, State, and local agencies in the legislative process may have to suffice. The principle to be applied is to obtain views of other agencies at the earliest feasible time in the development of program and project proposals. Care should be exercised so as not to duplicate the clearance process, but when actions being considered differ significantly from those that have already been reviewed pursuant to section 102(2)(C) of the Act an environmental statement should be provided.

(b) Ten (10) copies of draft environmental statements (when prepared), ten (10) copies of all comments made thereon (to be forwarded to the Council by the entity making comment at the time comment is forwarded to the responsible agency), and ten (10) copies of the final text of environmental statements (together with all comments received thereon by the responsible agency from Federal, State, and local agencies and from private organizations and individuals) shall be supplied to the Council on Environmental Quality in the Executive Office of the President (this will serve as making environmental statements available to the President). It is important that draft environmental statements be prepared and circulated for comment and furnished to the Council early enough in the agency review process before an action is taken in order to permit meaningful consideration of the environmental issues involved. To the maximum extent practicable no administrative action (i.e., any proposed action to be taken by the agency other than agency proposals for legislation to Congress or agency reports on legislation) subject to section 102(2)(C) is to be taken sooner than ninety (90) days after a draft environmental statement has been circulated for comment, furnished to the Council and, except where advance public disclosure will result in significantly increased costs of procurement to the Government, made available to the public pursuant to these guidelines; neither should such administrative action be taken sooner than thirty (30) days after the final text of an environmental statement (together with comments) has been made available to the Council and the public. If the final text of an environmental statement is filed within ninety (90) days after a draft statement has been circulated for comment, furnished to the Council and made public pursuant to this section of these guidelines, the thirty (30) day period and ninety (90) day period may run concurrently to the extent that they overlap.

(c) With respect to recommendations or reports on proposals for legislation to which section 102(2)(C) applies, the final text of the environmental statement and comments thereon should be available to the Congress and to the public in support of the proposed legislation or report. In cases where the scheduling of congressional hearings on recommendations or reports on proposals for legislation which the Federal agency has forwarded to the Congress does not allow adequate time for the completion of a final text of an environmental statement (together with comments), a draft environmental statement may be furnished to the Congress and made available to the public pending transmittal of the comments as received and the final text.

(d) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these guidelines concerning minimum periods for agency review and advance availability of environmental statements, the Federal agency proposing to take the action should consult with the Council on Environmental Quality about alternative arrangements. Similarly, where there are overriding considerations of expense to the Government or impaired program effectiveness, the responsible agency should consult the Council concerning appropriate modifications of the minimum periods.

(e) In accord with the policy of the National Environmental Policy Act and Executive Order 11514 agencies have a responsibility to develop procedures to insure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Agencies which hold hearings on proposed administrative actions or legislation should make the draft environmental statement available to the public at least fifteen (15) days prior to the time of the relevant hearings except where the agency prepares the draft statement on the basis of a hearing subject to the Administrative Procedure Act and preceded by adequate public notice and information to identify the issues and obtain the comments provided for in sections 6–9 of these guidelines.

(f) The agency which prepared the environmental statement is responsible for making the statement and the comments received available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C., sec. 552), without regard to the exclusion of interagency memoranda when such memoranda transmit comments of Federal agencies listed in section 7 of these guidelines upon the environmental impact of proposed actions subject to section 102(2)(C).

(g) Agency procedures prepared pursuant to section 3 of these guidelines shall implement these public information requirements and shall include arrangements for availability of environmental statements and comments at the head and appropriate regional offices of the responsible agency and at appropriate State, regional, and metropolitan clearinghouses unless the Governor of the State involved designates some other point for receipt of this information.

11. *Application of section 102(2)(C) procedure to existing projects and programs*. To the maximum extent practicable the section 102(2)(C) procedure should be applied to further major Federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of the Act on January 1, 1970. Where it is not practicable to reassess the basic course of action, it is still important that further incremental major actions be shaped so as to minimize adverse environmental consequences. It is also important in further action that account be taken of environmental consequences not fully evaluated at the outset of the project or program.

12. *Supplementary guidelines, evaluation of procedures*. (a) The Council on Environmental Quality after examining environmental statements and agency procedures with respect to such statements will issue such supplements to these guidelines as are necessary.

(b) Agencies will continue to assess their experience in the implementation of the section 102(2)(C) provisions of the Act and in conforming with these guidelines and report thereon to the Council on Environmental Quality by December 1, 1971. Such reports should include an identification of the problem areas and suggestions for revision or clarification of these guidelines to achieve effective coordination of views on environmental aspects (and alternatives, where appropriate) of proposed actions without imposing unproductive administrative procedures.

RUSSELL E. TRAIN,
Chairman.

APPENDIX I

(Check one) ( ) Draft. ( ) Final Environmental Statement.

Name of Responsible Federal Agency (with name of operating division where appropriate).

1. Name of Action. (Check one) ( ) Administrative Action. ( ) Legislative Action.

2. Brief description of action indicating what States (and counties) particularly affected.

3. Summary of environmental impact and adverse environmental effects.

4. List alternatives considered.

5. a. (For draft statements) List all Federal, State, and local agencies from which comments have been requested.

b. (For final statements) List all Federal, State, and local agencies and other sources from which written comments have been received.

6. Dates draft statement and final statement made available to Council on Environmental Quality and public.

APPENDIX II—FEDERAL AGENCIES WITH JURISDICTION BY LAW OR SPECIAL EXPERTISE TO COMMENT ON VARIOUS TYPES OF ENVIRONMENTAL IMPACTS

AIR

Air Quality and Air Pollution Control

Department of Agriculture—
  Forest Service (effects on vegetation).
Department of Health, Education, and Welfare (Health aspects).
Environmental Protection Agency—
  Air Pollution Control Office.
Department of the Interior—
  Bureau of Mines (fossil and gaseous fuel combustion).
  Bureau of Sport Fisheries and Wildlife (wildlife).
Department of Transportation—
  Assistant Secretary for Systems Development and Technology (auto emissions).
  Coast Guard (vessel emissions).
  Federal Aviation Administration (aircraft emissions).

Weather Modification

Department of Commerce—
  National Oceanic and Atmospheric Administration.
Department of Defense—
  Department of the Air Force.
Department of the Interior—
  Bureau of Reclamation.

ENERGY

Environmental Aspects of Electric Energy Generation and Transmission

Atomic Energy Commission (nuclear power).
Environmental Protection Agency—
  Water Quality Office.
  Air Pollution Control Office.
Department of Agriculture—
  Rural Electrification Administration (rural areas).
Department of Defense—
  Army Corps of Engineers (hydro-facilities).
Federal Power Commission (hydro-facilities and transmission lines).
Department of Housing and Urban Development (urban areas).
Department of the Interior—(facilities on Government lands).

Natural Gas Energy Development, Transmission and Generation

Federal Power Commission (natural gas production, transmission and supply).
Department of the Interior—
  Geological Survey.
  Bureau of Mines.

HAZARDOUS SUBSTANCES

Toxic Materials

Department of Commerce—
  National Oceanic and Atmospheric Administration.
Department of Health, Education and Welfare (Health aspects).
Environmental Protection Agency.
Department of Agriculture—
  Agricultural Research Service.
  Consumer and Marketing Service.
Department of Defense.
Department of the Interior—
  Bureau of Sport Fisheries and Wildlife.

Pesticides

Department of Agriculture—
  Agricultural Research Service (biological controls, food and fiber production).
  Consumer and Marketing Service.
  Forest Service.
Department of Commerce—
  National Marine Fisheries Service.
  National Oceanic and Atmospheric Administration.
Environmental Protection Agency—
  Office of Pesticides.
Department of the Interior—
  Bureau of Sport Fisheries and Wildlife (effects on fish and wildlife).
  Bureau of Land Management.
Department of Health, Education, and Welfare (Health aspects).

Herbicides

Department of Agriculture—
  Agricultural Research Service.
  Forest Service.
Environmental Protection Agency—
  Office of Pesticides.
Department of Health, Education, and Welfare (Health aspects).
Department of the Interior—
  Bureau of Sport Fisheries and Wildlife.
  Bureau of Land Management.
  Bureau of Reclamation.

Transportation and Handling of Hazardous Materials

Department of Commerce—
  Maritime Administration.
  National Marine Fisheries Service.
  National Oceanic and Atmospheric Administration (impact on marine life).
Department of Defense—
  Armed Services Explosive Safety Board.
  Army Corps of Engineers (navigable waterways).
Department of Health, Education, and Welfare—
  Office of the Surgeon General (Health aspects).
Department of Transportation—
  Federal Highway Administration Bureau of Motor Carrier Safety.
  Coast Guard.
  Federal Railroad Administration.
  Federal Aviation Administration.
  Assistant Secretary for Systems Development and Technology.
  Office of Hazardous Materials.
  Office of Pipeline Safety.
Environmental Protection Agecny (hazardous substances).
Atomic Energy Commission (radioactive substances).

LAND USE AND MANAGEMENT

Coastal Areas: Wetlands, Estuaries, Waterfowl Refuges, and Beaches

Department of Agriculture—
  Forest Service.
Department of Commerce—
  National Marine Fisheries Service (impact on marine life).
  National Oceanic and Atmospheric Administration (impact on marine life).
Department of Transportation—
  Coast Guard (bridges, navigation).
Department of Defense—
  Army Corps of Engineers (beaches, dredge and fill permits, Refuse Act permits).
Department of the Interior—
  Bureau of Sport Fisheries and Wildlife.
  National Park Service.
  U.S. Geological Survey (coastal geology).
  Bureau of Outdoor Recreation (beaches).
Department of Agriculture—
  Soil Conservation Service (soil stability, hydrology).
Environmental Protection Agency—
  Water Quality Office.

Historic and Archeological Sites

Department of the Interior—
  National Park Service.
Advisory Council on Historic Preservation.

- Department of Housing and Urban Development (urban areas).

Flood Plains and Watersheds

- Department of Agriculture—
  - Agricultural Stabilization and Research Service.
  - Soil Conservation Service.
  - Forest Service.
- Department of the Interior—
  - Bureau of Outdoor Recreation.
  - Bureau of Reclamation.
  - Bureau of Sport Fisheries and Wildlife.
  - Bureau of Land Measurement.
  - U.S. Geological Survey.
- Department of Housing and Urban Development (urban areas).
- Department of Defense—
  - Army Corps of Engineers.

Mineral Land Reclamation

- Appalachian Regional Commission.
- Department of Agriculture—
  - Forest Service.
- Department of the Interior—
  - Bureau of Mines.
  - Bureau of Outdoor Recreation.
  - Bureau of Sport Fisheries and Wildlife.
  - Bureau of Land Management.
  - U.S. Geological Survey.
- Tennessee Valley Authority.

Parks, Forests, and Outdoor Recreation

- Department of Agriculture—
  - Forest Service.
  - Soil Conservation Service.
- Department of the Interior—
  - Bureau of Land Management.
  - National Park Service.
  - Bureau of Outdoor Recreation.
  - Bureau of Sport Fisheries and Wildlife.
- Department of Defense—
  - Army Corps of Engineers.
- Department of Housing and Urban Development (urban areas).

Soil and Plant Life, Sedimentation, Erosion and Hydrologic Conditions

- Department of Agriculture—
  - Soil Conservation Service.
  - Agricultural Research Service.
  - Forest Service.
- Department of Defense—
  - Army Corps of Engineers (dredging, aquatic plants).
- Department of Commerce—
  - National Oceanic and Atmospheric Administration.
- Department of the Interior—
  - Bureau of Land Management.
  - Bureau of Sport Fisheries and Wildlife.
  - Geological Survey.
  - Bureau of Reclamation.

NOISE

Noise Control and Abatement

- Department of Health, Education, and Welfare (Health aspects).
- Department of Commerce—
  - National Bureau of Standards.
- Department of Transportation—
  - Assistant Secretary for Systems Development and Technology.
  - Federal Aviation Administration (Office of Noise Abatement).
- Environmental Protection Agency (Office of Noise).
- Department of Housing and Urban Development (urban land use aspects, building materials standards).

PHYSIOLOGICAL HEALTH AND HUMAN WELL BEING

Chemical Contamination of Food Products

- Department of Agriculture—
  - Consumer and Marketing Service.
- Department of Health, Education, and Welfare (Health aspects).
- Environmental Protection Agency—
  - Office of Pesticides (economic poisons).

Food Additives and Food Sanitation

- Department of Health, Education, and Welfare (Health aspects).
- Environmental Protection Agency—
  - Office of Pesticides (economic poisons, e.g., pesticide residues).
- Department of Agriculture—
  - Consumer Marketing Service (meat and poultry products).

Microbiological Contamination

- Department of Health, Education, and Welfare (Health aspects).

Radiation and Radiological Health

- Department of Commerce—
  - National Bureau of Standards.
- Atomic Energy Commission.
- Environmental Protection Agency—
  - Office of Radiation.
- Department of the Interior—
  - Bureau of Mines (uranium mines).

Sanitation and Waste Systems

- Department of Health, Education, and Welfare—(Health aspects).
- Department of Defense—
  - Army Corps of Engineers.
- Environmental Protection Agency—
  - Solid Waste Office.
  - Water Quality Office.
- Department of Transportation—
  - U.S. Coast Guard (ship sanitation).
- Department of the Interior—
  - Bureau of Mines (mineral waste and recycling, mine acid wastes, urban solid wastes).
  - Bureau of Land Management (solid wastes on public lands).
  - Office of Saline Water (demineralization of liquid wastes).

Shellfish Sanitation

- Department of Commerce—
  - National Marine Fisheries Service.
  - National Oceanic and Atmospheric Administration.
- Department of Health, Education, and Welfare (Health aspects).
- Environmental Protection Agency—
  - Office of Water Quality.

TRANSPORTATION

Air Quality

- Environmental Protection Agency—
  - Air Pollution Control Office.
- Department of Transportation—
  - Federal Aviation Administration.
- Department of the Interior—
  - Bureau of Outdoor Recreation.
  - Bureau of Sport Fisheries and Wildlife.
- Department of Commerce—
  - National Oceanic and Atmospheric Administration (meteorological conditions).

Water Quality

- Environmental Protection Agency—
  - Office of Water Quality.
- Department of the Interior—
  - Bureau of Sport Fisheries and Wildlife.
- Department of Commerce—
  - National Oceanic and Atmospheric Administration (impact on marine life and ocean monitoring).
- Department of Defense—
  - Army Corps of Engineers.
- Department of Transportation—
  - Coast Guard.

URBAN

Congestion in Urban Areas, Housing and Building Displacement

- Department of Transportation—
  - Federal Highway Administration.
    tion.
  - Federal Highway Administration.
- Office of Economic Opportunity.
- Department of Housing and Urban Development.
- Department of the Interior—
  - Bureau of Outdoor Recreation.

Environmental Effects With Special Impact in Low-Income Neighborhoods

- Department of the Interior—
  - National Park Service.
- Office of Economic Opportunity.
- Department of Housing and Urban Development (urban areas).
- Department of Commerce (economic development areas).
  - Economic Development Administration.
- Department of Transportation—
  - Urban Mass Transportation Administration.

Rodent Control

- Department of Health, Education, and Welfare (Health aspects).
- Department of Housing and Urban Development (urban areas).

Urban Planning

- Department of Transportation—
  - Federal Highway Administration
- Department of Housing and Urban Development.
- Environmental Protection Agency.
- Department of the Interior—
  - Geological Survey.
  - Bureau of Outdoor Recreation.
- Department of Commerce—
  - Economic Development Administration.

WATER

Water Quality and Water Pollution Control

- Department of Agriculture—
  - Soil Conservation Service.
  - Forest Service.
- Department of the Interior—
  - Bureau of Reclamation.
  - Bureau of Land Management.
  - Bureau of Sports Fisheries and Wildlife.
  - Bureau of Outdoor Recreation.
  - Geological Survey.
  - Office of Saline Water.
- Environmental Protection Agency—
  - Water Quality Office.
- Department of Health, Education, and Welfare (Health aspects).
- Department of Defense—
  - Army Corps of Engineers.
  - Department of the Navy (ship pollution control).
- Department of Transportation—
  - Coast Guard (oil spills, ship sanitation).
- Department of Commerce—
  - National Oceanic and Atmospheric Administration.

Marine Pollution

- Department of Commerce—
  - National Oceanic and Atmospheric Administration.
- Department of Transportation—
  - Coast Guard.
- Department of Defense—
  - Army Corps of Engineers.
  - Office of Oceanographer of the Navy.

River and Canal Regulation and Stream Channelization

- Department of Agriculture—
  - Soil Conservation Service.
- Department of Defense—
  - Army Corps of Engineers.

Department of the Interior—
  Bureau of Reclamation.
  Geological Survey.
  ureau of Sport Fisheries and Wildlife.
Department of Transportation—
  Coast Guard.

WILDLIFE

Environmental Protection Agency.
Department of Agriculture—
  Forest Service.
  Soil Conservation Service.
Department of the Interior—
  Bureau of Sport Fisheries and Wildlife.
  Bureau of Land Management.
  Bureau of Outdoor Recreation.

FEDERAL AGENCY OFFICES FOR RECEIVING AND COORDINATING COMMENTS UPON ENVIRONMENTAL IMPACT STATEMENTS

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Robert Garvey, Executive Director, Suite 618 801 19th Street NW., Washington, DC 20006 343-8607.

DEPARTMENT OF AGRICULTURE

Dr. T. C. Byerly, Office of the Secretary, Washington, D.C., 20250, 388-7803.

APPALACHIAN REGIONAL COMMISSION

Orville h. Lerch, Alternate Federal Co-Chairman, 1666 Connecticut Avenue NW., Washington, DC 20235, 967-4103.

DEPARTMENT OF THE ARMY (CORPS OF ENGINEERS)

Col. J. B. Newman, Executive Director of Civil Works, Office of the Chief of Engineers, Washington, D.C. 20314, 693-7168.

ATOMIC ENERGY COMMISSION

For nonregulatory matters: Joseph J. DiNunno, Director, Office of Environmental Affairs, Washington, D.C. 20545, 973-5391.

For regulatory matters: Christopher L. Henderson, Assistant Director for Regulation, Washington, D.C. 20545, 973-7531.

DEPARTMENT OF COMMERCE

Dr. Sydney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Washington, D.C. 20230, 967-4335.

DEPARTMENT OF DEFENSE

Dr. Louis M. Rousselot, Assistant Secretary for Defense (Health and Environment), Room 3E172, The Pentagon, Washington, DC 20301, 697-2111.

DELAWARE RIVER BASIN COMMISSION

W. Brinton Whitall, Secretary, Post Office Box 360, Trenton, NJ 08603, 609-883-9500.

ENVIRONMENTAL PROTECTION AGENCY

Charles Fabrikant, Director of Impact Statements Office, 1626 K Street NW., Washington, DC 20460, 632-7719.

FEDERAL POWER COMMISSION

Frederick H. Warren, Commission's Advisor on Environmental Quality, 441 G Street NW., Washington, DC 20426, 386-6084.

GENERAL SERVICES ADMINISTRATION

Rod Kreger, Deputy Administrator, General Services Administration-AD, Washington, D.C. 20405, 343-6077.

Alternate contact: Aaron Woloshin, Director, Office of Environmental Affairs, General Services Administration-ADF, 343-4161.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Roger O. Egeberg, Assistant Secretary for Health and Science Affairs, HEW North Building, Washington, D.C. 20202, 963-4254.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT[1]

Charles Orlebeke, Deputy Under Secretary, 451 Seventh Street SW., Washington, DC 20410, 755-6960.

Alternate contact: George Wright, Office of the Deputy Under Secretary, 755-8192.

DEPARTMENT OF THE INTERIOR

Jack O. Horton, Deputy Assistant Secretary for Programs, Washington, D.C. 20240, 343-6181.

NATIONAL CAPITAL PLANNING COMMISSION

Charles H. Conrad, Executive Director, Washington, D.C. 20576, 382-1163.

OFFICE OF ECONOMIC OPPORTUNITY

Frank Carlucci, Director, 1200 19th Street, NW., Washington, DC 20506, 254-6000.

SUSQUEHANA RIVER BASIN COMMISSION

Alan J. Summerville, Water Resources Coordinator, Department of Environmental Resources, 105 South Office Building, Harrisburg, PA. 17120, 717-787-2315.

TENNESSEE VALLEY AUTHORITY

Dr. Francis Gartrell, Director of Environmental Research and Development, 720 Edney Building, Chattanooga, TN 37401, 615-755-2002.

DEPARTMENT OF TRANSPORTATION

Herbert F. DeSimone, Assistant Secretary for Environment and Urban Systems, Washington, D.C. 20590, 426-4563.

DEPARTMENT OF TREASURY

Richard E. Slitor, Assistant Director, Office of Tax Analysis, Washington, D.C. 20220, 964-2797.

DEPARTMENT OF STATE

Christian Herter, Jr., Special Assistant to the Secretary for Environmental Affairs, Washington, D.C. 20520, 632-7964.

[FR Doc.71-5705 Filed 4-22-71;8:50 am]

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[1] Contact the Deputy Under Secretary with regard to environmental impacts of legislation, policy statements, program regulations and procedures, and precedent-making project decisions. For all other HUD consultation, contact the HUD Regional Administrator in whose jurisdiction the project lies, as follows:

James J. Barry, Regional Administrator I, Attention: Environmental Clearance Officer, Room 405, John F Kennedy Federal Building, Boston, MA 02203, 617-223-4066.

S. William Green, Regional Administrator II, Attention: Environmental Clearance Officer, 26 Federal Plaza, New York, NY 10007, 212-264-8068.

Warren P. Phelan, Regional Administrator III, Attention: Environmental Clearance Officer, Curtis Building, Sixth and Walnut Street, Philadelphia, PA 19106, 215-597-2560.

Edward H. Baxter, Regional Administrator IV, Attention: Environmental Clearance Officer, Peachtree-Seventh Building, Atlanta, GA 30323, 404-526-5585.

George Vavoulis, Regional Administrator V, Attention: Environmental Clearance Officer, 360 North Michigan Avenue, Chicago, IL 60601, 312-353-5680.

Richard L. Morgan, Regional Administrator VI, Attention: Environmental Clearance Officer, Federal Office Building, 819 Taylor Street, Fort Worth, TX 76102, 817-334-2867.

Harry T. Morley, Jr., Regional Administrator VII, Attention: Environmental Clearance Officer, 911 Walnut Street, Kansas City, MO 64106, 816-374-2661.

Robert C. Rosenheim, Regional Administrator VIII, Attention: Environmental Clearance Officer, Samsonite Building, 1051 South Broadway, Denver, CO 80209, 303-837-4061.

Robert H. Baida, Regional Administrator IX, Attention: Environmental Clearance Officer, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102, 415-556-4752.

Oscar P. Pederson, Regional Administrator X, Attention: Environmental Clearance Officer, Room 226, Arcade Plaza Building, Seattle, WA 98101, 206-583-5415.

ATTACHMENT D

CEQ MEMORANDUM

COUNCIL ON ENVIRONMENTAL QUALITY MEMORANDUM TO FEDERAL AGENCIES ON PROCEDURES FOR IMPROVING ENVIRONMENTAL IMPACT STATEMENTS

Memorandum for agency and general counsel liaison on National Environmental Policy Act (NEPA) matters

Subject: Recommendations for Improving Agency NEPA Procedures

In response to a variety of agency inquiries, we are circulating the attached recommendations for improving agency NEPA procedures, taking particular account of judicial decisions construing NEPA. In a previous memorandum dated February 29, 1972 (a copy of which is also attached) Chairman Train drew attention to the continuing need for reviewing and improving agency NEPA procedures and made two basic recommendations:

1. "In particular we are interested in finding ways of consolidating numbers of impact statements into fewer but broader and more meaningful reviews."

2. "On the matter of applying the NEPA statutory language 'major Federal actions significantly affecting the quality of the human environment' to your particular agency programs and pinpointing the precise timing of the NEPA review and interagency consultations called for, your agency procedures must provide the specifics within the framework of the statute and our Guidelines. These procedures are important both in helping to identify the types of action on which impact statements are likely to be necessary and those where statements are not called for."

In addition to agency inquiries about the effect of court decisions, a number of agencies have raised procedural questions relating to the interpretation of existing provisions of the CEQ Guidelines which we feel deserve clarification in a general memorandum.

Agencies should consider the extent to which the issues discussed in this memorandum and Chairman Train's memorandum of February 29 are adequately dealt with under their existing NEPA procedures. In many cases, procedures or practices may have to be modified. Agencies are requested to inform the Council of the action they take in response to these recommendations.

/s/Timothy Atkeson
General Counsel

RECOMMENDATIONS FOR IMPROVING AGENCY NEPA PROCEDURES

A. Substantive Issues: The Required Content of Environmental Statements.

1. Duty to Disclose Full Range of Impacts.

Court decisions under the National Environmental Policy Act have established that the "detailed" statement referred to in section 102 of the Act must thoroughly explore all known environmental consequences of and alternatives to major proposed actions even though this may lead to consideration of effects and options outside the agency's actual control.

Viewed as simply an application of NEPA's "full disclosure" requirement, this basic principle is meant to ensure that relevant officials and the public are alerted to the environmental impact of Federal agency action. See EDF v. Corps of Engineers, 2 ERC 1260, 1267 (E.D. Ark. 1971)

Furthermore, the range of impacts which must be considered cannot be limited to the traditional area of agency jurisdiction or expertise. NEPA in essence adds a new mandate to the enabling legislation of all agencies, requiring the development of environmental awareness for the full range of impacts of proposed agency action. By failing to discuss reasonably foreseeable impacts or by discussing those impacts in a perfunctory manner, an agency defeats the purpose of the statement and lays itself open to the charge of non-compliance with the Act.*

In order to ensure full compliance with this requirement it is desirable that agencies develop in advance a list of the typical impacts of those classes of action that the agency regularly takes. In developing such a list, agencies are reminded that impacts include not only direct effects, but also secondary effects such as "the effect of any possible change in population patterns upon the resource base, including land use, water, and public services, of the area in question." CEQ Guidelines Sec. 6(a)(ii).

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*See, e.g., Calvert Cliffs v. AEC, 2 ERC 1779, 1782 (D.C. Cir. 1971)(purpose of statement is to aid agency in its decision and to fully inform other interested agencies and the public of environmental consequences); EDF v. Corps of Engineers, 2 ERC 1260, 1267 (E.D. Ark., 1971)(statement must alert President, CEQ, public, and Congress to all known possible environmental consequences); EDF v. Hardin, 2 ERC 1425, 1426 (D. D.C. 1971) (agency must undertake research in planning stage adequate to expose potential environmental impact); Ely v. Velde, 3 ERC 1286 (4th Cir. 1971)(genuine rather than perfunctory compliance with NEPA requires agency to explicate fully its course of inquiry, its analysis and its reasoning); NRDC v. Morton, 3 ERC 1558, 1562, (D.C. Cir. 1972)(statement is for the guidance of ultimate decisionmakers--Congress and the President--as well as agency, and must provide discussion of all reasonable alternatives); Greene County v. FPC, 3 ERC 1595, 1600 (2d Cir. 1972) (statement must present "a single coherent and comprehensive environmental analysis").

By giving consideration to such impacts agencies should also be able to develop an increasingly specific set of standards for determining what constitutes "major," environmentally "significant" actions. Application of such standards to the normal range of agency actions will make possible earlier and more accurate identification of actions subject to the Sec. 102 requirement.

Recommendation No. 1: Agencies should develop a list of the full range of impacts likely to be involved in the typical types of actions they undertake. This will require a listing both of typical agency actions affecting the environment, see, e.g., Forest Service NEPA procedures, 36 *Fed. Reg.* 23670 (1971), as well as a list of related, potential impacts, see, e.g., Water Resources Council "Proposed Principles....," 36 *Fed. Reg.* 24159-62 (1971). This description of potential impacts will help guide officials responsible for preparation of impact statements by ensuring that critical impacts are not overlooked and by making possible earlier, more accurate identification of "major," environmentally "significant" actions.

2. Duty to "Balance" Advantages and Disadvantages of the Proposed Action.

Inherent in the duty imposed on any agency by NEPA to promote environmental quality is the obligation to weigh the possible environmental effects of a proposal against the effects on other public values the agency is mandated to consider. If the environmental effects are adverse, the agency must consider whether they outweigh the benefits of the proposal in deciding whether to go ahead. This implicit requirement is confirmed by the directive of Section 102(2)(B) that agencies develop methods for giving "presently unquantified environmental amenities and values ... appropriate consideration in decisionmaking along with economic and technical considerations."

However, NEPA does not specify whether this balancing of environmental and other considerations must be spelled out in the environmental impact statement under Section 102(2)(C). Each of the five items expressly required to be included in the statement relates to environmental effects--except the third, which does not specify what type of information should be given about "alternatives to the proposed action." From the bare language of Section 102(2)(C), it is not wholly clear whether the 102 statement is to catalog only the environmental effects of the proposed action and of alternatives, or whether the statement is to discuss *all* of the important considerations bearing on the wisdom of the proposed action.

The legislative history suggests that Congress did expect the 102 statement to record the agency's trade-offs of competing values. In explaining the bill on the Senate floor, Senator Jackson said:

Subsection 102(c) establishes a procedure designed to insure that in instances where a proposed major Federal action would have a significant impact on the environment that the impact has in fact been considered, that any adverse effects which cannot be avoided are justified by some other *stated* consideration of national policy, that short-term uses are consistent with long-term productivity, and that any irreversible and irretrievable commitments of resources are warranted. 115 *Cong*. *Rec*. 29055 (Oct. 8, 1969). (Emphasis added.)

This interpretation is supported by several statements in court decisions. In the *Calvert Cliffs* case the court stressed the necessity for "balancing" under NEPA and the role of the 102 statement in showing how the balancing was done:

In some instances environmental costs may outweigh economic and technical benefits and in other instances they may not. But NEPA mandates a rather finely tuned and "systematic" balancing analysis in each instance.

To insure that the balancing analysis is carried out and given full effect, Section 102(2)(C) requires that responsible officials of all agencies prepare a "detailed statement" covering the impact of particular actions on the environment, the environmental costs which might be avoided, and alternative measures which might alter the cost benefit equation. 2 ERC at 1781-82.

Similarly, in *Natural Resources Defense Council v. Morton*, the court observed that:

The impact statement provides a basis for (a) evaluation of the benefits of the proposed project in light of its environmental risks, and (b) comparison of the net balance for the proposed project with the environmental risk presented by alternative courses of action. 3 ERC at 1561.

These judicial comments do not, however, detract from the *primary* purpose of the 102 statement: the assessment of the environmental effects of possible actions. NEPA was enacted out of a concern that environmental considerations were not being fully canvassed before action, and the purpose of Section 102(2)(C) is primarily to require a "detailed statement" of environmental effects. Where an agency's proposal entails adverse environmental consequences, the 102 statement must identify the countervailing interests that would support a decision to go ahead. This does not mean that the statement may be used as a promotional document in favor of the proposal, at the expense of a thorough and rigorous analysis of environmental risks. In most cases it may be impossible and unnecessary to discuss the countervailing interests in the same detail as environmental factors. The court in the *Morton* case observed that "the consideration of pertinent alternatives requires a weighing of numerous matters, such as economics, foreign relations [and] national security..." 3 ERC at 1561. A detailed discussion of each of these subjects could require as much space as the environmental analysis itself, destroying the focus of the 102 statement and undercutting the purpose of NEPA. What is necessary is a succinct explanation of the factors to be balanced in reaching a decision, thus altering the agency decisionmaker, as well as the President, Congress, and the public to the nature of the interests that are being served at the expense of environmental values.

Recommendation No. 2: Wherever adverse environmental effects are found to be involved in the proposed action, the impact statement should indicate what other interests and considerations of Federal policy might be found to justify those effects. The statement should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects. In this connection, agencies that prepare cost-benefit analyses of proposed actions should attach such analyses to the environmental impact statement.

3. *Duty to Consider Opposing Views*.

In *Committee for Nuclear Responsibility v. Seaborg*, 3 ERC 1126 (D.C. Cir. 1971), the Court of Appeals considered the duty to discuss opposing views under NEPA. The Court observed that in order for the 102 statement to meet adequately the "full disclosure requirement," it must "set forth the opposing views" on significant environmental issues raised by the proposal. To omit from the statement any reference whatever to such views would be "arbitrary and impermissible." Again, however, the court noted that "only *responsible* views need be included." What is required is "a meaningful reference that identifies the problem at hand" for the agency decisionmaker. 3 ERC at 1129.

An earlier district court opinion stressed this requirement in even stronger terms:

> Where experts, or concerned public or private organizations, or even ordinary lay citizens, bring to the attention of the responsible agency environmental impacts which they contend will result from the proposed agency action, then the Sec. 102 statement should set forth these contentions and opinions, even if the responsible agency finds no merit in them whatsoever. Of course, the Sec. 102 statement can and should also contain the opinion of the responsible agency with respect to all such

viewpoints. The record should be complete, EDF v. Corps of Engineers, 2 ERC 1260, 1267 (E.D. Ark. 1971).

Again the relevance of this requirement for agency NEPA procedures is primarily a matter of ensuring that opposing views are fairly treated and discussed in the process of preparing draft and final statements.

Recommendation No. 3: Agencies should make an effort to discover and discuss all major points of view in the draft statement itself. Where opposing professional views and responsible opinions have been overlooked in the draft statement and are brought to the agency's attention through the commenting process, the agency should review the positive and negative environmental effects of the action in light of those views and should make a meaningful reference in the final statement to the existence of any responsible opposing view not adequately discussed in the draft statement with respect to adverse environmental effects, indicating the agency's response to the issues raised. All substantive comments received on the draft should be attached to the final statement, whether or not each such comment is thought to merit individual discussion by the agency in the text of the statement. At the same time that copies are sent to the Council, copies of final statements, with comments attached should also be sent to all entities--Federal, State, and local agencies, private organizations and individuals--that made substantive comments on the draft statement, thus informing such entities of the agency's disposition of their arguments.

4. Reasonable "Alternatives" to the Proposed Action.

The recent decision in NDRC v. Morton, supra, discussed the "full disclosure" requirement in relation to the requirement that agencies consider the "alternatives" to the proposed action. See also EDF v. Corps of Engineers, 2 ERC 1260, 1269 (E.D. Ark. 1971) (discussing respects in which consideration of alternatives in proposed dam project was legally deficient). The most significant aspect of the Morton decision is the court's conclusion that all alternatives reasonably available to the Government as a whole must be discussed--even if some of those alternatives are outside the control of the agency preparing the statement. Discussion of such alternatives is required in order to guide the decision at hand as well as to inform the public of the issues and to guide the decisions of the President and Congress.

The court in this case was careful, however, to emphasize that it was not requiring the impossible. "A rule of reasons is implicit in this aspect of the law, as it is in the requirement that the agency provide a statement concerning the opposing views that are reasonable." 3 ERC at 1561 (citing Committee for Nuclear Responsibility, Inc. v. Seaborg, 3 ERC 1126, 1128-29 (D.C. Cir. 1971)).

What NEPA requires is "information sufficient to permit a reasoned choice of alternatives so far as environmental aspects are concerned." 3 ERC at 1563. Detailed discussion is not required of alternatives that "are deemed only remote and speculative possibilities, in view of basic changes required in statutes and policies of other agencies." 3 ERC at 1564. And the agencies need not indulge in "crystal ball' inquiry" in assessing the effects of alternatives. The agency will have taken the "hard look" required by NEPA if it has discussed the reasonably foreseeable effects with a thoroughness commensurate with their severity and the significance of the action.

The relevance of this decision for agency NEPA procedures is primarily one of ensuring that the reference to "alternatives" is interpreted consistently with applicable judicial opinions. In most cases a judicial interpretation of a statutory term does not require an amendment of related documents employing the term. Presumably the term will be applied and interpreted by an agency in accordance with governing judicial decisions. However, in view of the importance of the Morton decision and in view of the conflicting practices of some agencies prior to the decision, it seems preferable to expand the reference to "alternatives" in agency NEPA procedures at least to the extent of indicating that all reasonable alternatives will be evaluated, even though they may not all lie within the agency's control. Such a revision would not add in any way to an agency's current legal responsibilities, and might ensure that officials preparing the statements keep in mind the proper scope of alternatives they must consider.

Recommendation No. 4: Agencies should indicate that all reasonable alternatives and their environmental impacts are to be discussed, including those not within the authority of the agency. Examples of specific types of alternatives that should be considered in connection with specific kinds of actions should be given where possible. Such examples should include, where relevant:

(1) the alternative of taking no action;

(2) alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts (e.g., a fossil fuel v. a nuclear power plant);

(3) alternatives related to different designs or details of the proposed action, which would present different environmental impacts (e.g., pollution control equipment on a nuclear plant).

In each case, the analysis of alternatives should be sufficiently detailed and rigorous to permit independent and comparative evaluation of the benefits, costs and environmental risks of the proposed action and each alternative.

B. Procedural Issues: Preparation and Circulation of Environmental Statements.

1. The "Pre-Draft" Stage.

The issues discussed above with reference to the required content of impact statements necessarily have implications for the procedures that agencies follow in preparing such statements. It has already been noted, for example, that agencies should make every effort to anticipate and discuss all major points of view on the impact of the proposed action in the draft statement itself. A related procedural question concerns the extent to which agencies should formally seek advice from other agencies or members of the public prior to preparing a draft statement.

The CEQ guidelines do not require a formalized "pre-draft" consultation process. Indeed, the reason for requiring a draft statement in the first place was in order to satisfy the "prior consultation" requirement found in Sec. 102 of the Act, which refers only to a "detailed statement." At the same time, however, in order for the draft statement to present an adequate basis for discussion and comment, it must provide a fairly thorough discussion of the impacts of the proposed action and alternatives. Where an agency lacks the expertise for making such an evaluation, it should not hesitate to solicit help on an informal basis from other agencies. Cooperative arrangements of this sort have already been tried in a number of cases. Furthermore, in preparing a draft statement any agency should welcome whatever helpful information maybe forthcoming from other agencies or from the public.

In order for such information to be forthcoming, however, agencies would need to develop means of alerting other agencies and interested members of the public to the fact that a draft statement is being prepared. An announcement to this effect, at least with respect to administrative actions, would serve three useful purposes:

(1) it would enable agencies and interested persons with relevant information to make such information available in time for use in the draft statements;

(2) it would provide advance notice of the fact that a draft statement will soon be available for comment;

(3) it would furnish evidence of the point in time in the agency decisionmaking process that the 102 process is initiated.

Recommendation No. 5: Agencies should devise an appropriate early notice system, by which the decision to prepare an impact statement is announced as soon as it is practicable after that decision is made. (Compare in this respect the "notice of intent" provisions contained in Sec. 8b of the NEPA procedures of the Environmental Protection Agency and the provisions for early public notice contained in paragraphs 12 and 14 of the NEPA procedures of the Corps of Engineers.) In connection with the development of such a procedure, an agency should consider maintaining a list of statements under preparation, revising the list as additions are made and making the list available for public inspection.

2. Draft Statement Reference to Underlying Documents.

The concern that underlies many of the judicial interpretations of the Sec. 102 requirement is one of ensuring that the Sec. 102 process provides an adequate opportunity for comment and participation by other agencies as well as interested members of the public.

In addition, the requirement that agencies consider and respond to opposing views suggests that the 102 statement must consist of more than simple assertions about expected environmental impacts: the statement must also reflect the underlying information on which those assertions are based. One of the primary reasons for the injunction issued in EDF v. Corps of Engineers, for example, was the discrepancy between assertions made in the impact statement and the evidence on which those assertions were based. See 2 ERC at 1267-69. This problem can largely be avoided by indicating in the draft statement the basis relied on for assertions that are likely to prove controversial or debatable.

Recommendation No. 6: Draft statements should indicate the underlying studies, reports, and other information obtained and considered by the agency in preparing the statement. The agency should also indicate how such documents may be obtained. If the documents are attached to the statement, care should be taken to ensure that the statement remains an essentially self-contained instrument, easily understood by the reader without the need for under cross-reference.

3. Publication and Circulation of Statements.

Section 10 of the CEQ guidelines emphasizes the importance of preparing and circulating draft statements "early enough in the agency review process before an action is taken in order to permit a meaningful consideration of the environmental issues involved." The Council has recently received complaints from a number of agencies, as well as from members of the public, that the minimum periods established for comment and advance availability of statements are being unduly shortened by the delay in actual receipt of the statement. Confusion appears to have developed over whether the time periods are to run from the date the agency mails the statement, or from the date the statement is received by the commenting group.

In accordance with Sec. 10(b) of the CEQ guidelines, the Council's policy has been to calculate the time periods from the date the statement is received at the Council on Environmental Quality. This date will appear in the Council's weekly publication in the *Federal Register* of statements received during the past week as well as in the monthly *102 Monitor*. In order to avoid future confusion on this issue, agencies should ensure that their practices in calculating the minimum time periods reflect this policy.

In many cases, of course, a time lag will still occur between the date of receipt of a statement by the Council and the date of receipt by other agencies or members of the public. To some extent, the problems created by this delay can be avoided by adoption of the early notice device described in Recommendation No. 5, *supra*: such a device would enable potential commenting entities to request direct notification as soon as the draft statement is available. In large measure, though, the problem of providing "timely public information," see Executive order 11514, Sec. 2 (b), requires agency initiative in publicizing the fact that a draft statement is available.

Agencies should not rely solely on the fact of *Federal Register* publication by the Council, but should consider adopting such practices as publication in local newspapers and automatic notification of (and possible automatic distribution of statements to) organizations and individuals that the agency knows are likely to be interested in the project.

Recommendation No. 7: Agencies should ensure that the minimum period for review and advance availability of statements are calculated from the date of receipt of the statement by the Council on Environmental Quality, as noted in the Council's *Federal Register* and *102 Monitor* announcements. Agencies should also devise appropriate methods for publicizing the existence of draft statements, for example by publication in local newspapers or by maintaining a list of groups known to be interested in the agency's activities and directly notifying such groups of the existence of a draft statement, or sending them a copy, as soon as it has been prepared.

4. *Actions Which Involve More than One Agency*.

Some confusion has arisen in applying the "lead agency" concept to actions involving more than one agency. Section 5(b) of the CEQ guidelines provides that the lead agency is "the Federal agency which has primary authority for committing the Federal Government to a course of action with significant environmental impact." This description of "lead agency" was not meant to foreclose the possibility of having a statement prepared jointly by all agencies involved in the program or project. The critical consideration is that the cumulative impacts of the entire project be evaluated, even though each individual agency's action relates only to a part of the project. In some cases it will be most efficient for the agencies involved to agree on a single lead agency to prepare the statement on the entire project, obtaining assistance as necessary from the other agencies involved or from other agencies with relevant expertise. Relevant factors in determining the proper agency to assume such a role include: the time sequence in which the agencies become involved in the project, the magnitude of their respective involvement, and their relative expertise with respect to the project's environmental effects. But these criteria are not absolute and do not foreclose either a cooperatively prepared statement, or advance agreement on designation of a "lead agency" for purposes of ensuring leadership and assigning responsibility. Whichever procedure is followed, the two critical considerations inherent in the provisions of Section 5 (b) are: (1) evaluation of the entire project; and (2) preparation of the 102 statement before any of the participating agencies has taken major or irreversible action with respect to the project. See Upper Pecos Ass'n vs. Stans, 2 ERC 1418 (10th Cir. 1971), pet'n. for cert. pending, 40 USLW 3444 No. 71-1133, Mar. 6, 1972).

Recommendation No. 8: In resolving "lead agency" questions, agencies should consider the possibility of joint preparation of a statement by all agencies involved, as well as designation of a single agency to assume leadership responsibilities in preparing the statement. In either case, the statement should contain an environmental evaluation of the entire project, and should be prepared before major or irreversible actions have been taken by any of the participating agencies.

5. Statements which Cover More than One Action.

Related to the above problem, is the problem of determining the proper scope of an environmental impact statement in connection with Federal programs that may involve a multiplicity of individual "actions." Section 10 (a) of the CEQ guidelines makes reference to the need for such "program" statements in certain cases, and this topic was explored in some detail at our agency review sessions in December. In part, the problem requires careful agency attention to the definition of the "action" that the agency is undertaking. If the definition is too broad and the program too far removed from actual implementation, the resulting analysis is likely to be too general to prove useful. On the other hand, an excessively narrow definition is likely to result in impact statements that ignore the cumulative effects of a number of individually small actions, or that come so late in the process that basic program decisions are no longer open for review.

Individual actions that are related either geographically or as logical parts in a chain of contemplated actions may be more appropriately evaluated in a single, program statement. Such a statement also appears appropriate in connection with the issuance of rules, regulations, or other general criteria to govern the conduct of a continuing program, or in the development of a new program that contemplated a number of subsequent actions. Examples of such program statements include the Interior Department's statements on its oil shale program and on its exploitation of geothermal steam under the Geothermal Steam Act of 1970. In all of these cases, the program statement has a number of advantages. It provides an occasion for a more exhaustive consideration of effects and alternatives than would be practicable in a statement on an individual action. It ensures consideration of cumulative impacts that might be slighted in a case-by-case analysis. And it avoids duplicative reconsideration of basic policy questions. The program statement can, of course, be supplemented or updated as necessary to account for changes in circumstances or public policy and to measure cumulative impacts over time.

A program statement will not satisfy the requirements of Section 102, however, if it is superficial or limited to generalities. Where all significant issues cannot be anticipated or adequately treated in connection with the program as a whole, statements of more limited scope will be necessary on subsequent, individual actions in order to complete the analysis.

Recommendation No. 9: In preparing statements, agencies should give careful attention to formulating an appropriate definition of the scope of the project that is the subject of the statement. In many cases, broad program statements will be appropriate, assessing the environmental effects of a number of individual actions on a given geographical area, or the overall impact of a large-scale program or chain of contemplated projects, or the environmental implications of research activities that have reached a stage of investment or commitment to implementation likely to restrict later alternatives. Preparation of program statements in these cases should be in addition to preparation of subsequent statements on major individual actions wherever such actions have significant environmental impacts that were not fully evaluated in the program statement.

6. Environmental Protective Regulatory Activities.

Section 5 (d) of the CEQ guidelines indicates that certain activities of the Environmental Protection Agency do not constitute "actions" for purposes of Section 102. A number of agencies have been confused by the reference in this section to activities "concurred" in by EPA. That reference is not meant to permit agencies to avoid the 102 process merely because the views of the EPA have somehow been secured with respect to environmental aspects of proposed activities.

Additional confusion has been created by recent district court decisions, severely restricting the applicability of Sec. 5 (d) with respect to regulatory activities taken by agencies other than the EPA. See *Kalur v. Resor*, 3 ERC 1458 (D. D.C. 1971); *Sierra Club v.Sargent*, 3 ERC 1905 (W.D. Wash. 1972). These cases are being appealed. In addition, legislative proposals have been introduced seeking Congressional clarification of some of the issues involved. In this respect, agencies should be aware of the testimony given by Chairman Train on March 22, 1972 before the Fisheries and Wildlife Conservation Subcommittee of the House Committee on Merchant Marine and Fisheries:

There has been some confusion about the Council's views on the *Kalur* decision and what clarification of NEPA's applicability to environmental protective regulatory activity is necessary. In my opinion, the most narrow possible legislative action, addressed only to the water quality permit program, is desirable. With respect to EPA's other environmental protective regulatory activities we are asking EPA to study and revise its NEPA procedures to state specifically what activities and authorities are included under Section 5 (d) of our Guidelines and the rationale for such inclusion.

Recommendation No. 10: Except for the Water Quality permit program, and those activities of the Environmental Protection Agency determined by EPA and the CEQ to justify inclusion under Section 5 (d) of the CEQ guidelines, no other agency actions should be considered as exempted from the requirements of Section 102 under Section 5 (d).

ATTACHMENT E

OMB MEMORANDUM

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 9, 1973

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

Subject: State and Local Agency Review of Impact Statements

We have received indications that there is considerable confusion among departments and agencies as well as at State and local levels concerning the relationship between A-95 procedures for review and comment, and reviews of environmental impact statements required under section 102(2)(c) of the National Environmental Policy Act. There appears to be uncertainty about (1) the role of the A-95 clearinghouses with respect to environmental assessment; (2) the timing of and occasions for State and local inputs to the environmental assessment process; and (3) responsibility for securing State and local reviews of environmental impact statements. Therefore, in anticipation of rewording of the Guidelines (sec. 9, State and local review), this memorandum will clarify these relationships and responsibilities.

1. OMB Circular No. A-95 through its system of clearinghouses provides a means for securing the views of State and local environmental agencies, which can assist in the preparation of impact statements. Under A-95, review of the proposed project in the case of federally assisted projects (Part I of A-95) generally takes place prior to the preparation of the impact statement. Therefore, comments on the environmental effects of the proposed project that are secured during this stage of the A-95 process represent inputs to the environmental impact statement.

2. In the case of direct Federal development (Part II of A-95), Federal agencies are required to consult with clearinghouses at the earliest practicable time in the planning of the project or activity. Where such consultation occurs prior to completion of the draft impact statement, comments relating to the environmental effects of the proposed action would also represent inputs to the environmental impact statement.

3. In either case, whatever comments are made on environmental effects of proposed Federal or federally assisted projects by clearinghouses, or by State and local environmental

agencies through clearinghouses, in the course of the A-95 review should be attached to the draft impact statement when it is circulated for review. Copies of the statement should be sent to the agencies making such comments. Whether those agencies then elect to comment again on the basis of the draft impact statement is a matter to be left to the discretion of the commenting agency depending on its resources, the significance of the project, and the extent to which its earlier comments were considered in preparing the draft statement.

4. The clearinghouses may also be used, by mutual agreement, for securing reviews of the draft environmental impact statement. However, the Federal agency may wish to deal directly with appropriate State or local agencies in the review of impact statements because the clearinghouses may be unwilling or unable to handle this phase of the process. In some cases, the Governor may have designated a specific agency, other than the clearinghouse, for securing reviews of impact statements. In any case, the clearinghouses should be sent copies of the impact statement.

5. To aid clearinghouses in coordinating State and local comments, draft statements should include copies of State and local agency comments made earlier under the A-95 process and should indicate on the summary sheet those other agencies from which comments have been requested. Appendix I of the CEQ Guidelines specifies that such a list shall be included in the summary sheet. It does not appear that all agencies are consistently following this practice.

In order to assist you as to the proper State clearinghouse/ appropriate unit of State and local government to contact concerning review of environmental impact statements, attached you will find a current listing of State clearinghouses and alternative points which have been designated by particular States to receive environmental impact statements.

Your prompt attention to this matter is appreciated.

Caspar W. Weinberger
Director, Office of
Management and Budget

Russell E. Train
Chairman, Council on
Environmental Quality

COUNCIL OF STATE PLANNING AGENCIES*
(State Clearinghouses--Region X)

November 1972

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ATTACHMENT F

OMB CIRCULAR NO. A-95

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 9, 1971
(As revised by TM#1, dated July 26, 1971
and TM#2, dated March 8, 1972)

CIRCULAR NO. A-95
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Evaluation, review, and coordination of Federal and federally assisted programs and projects

1. Purpose. This Circular furnishes guidance to Federal agencies for added cooperation with State and local governments in the evaluation, review, and coordination of Federal assistance programs and projects. The Circular promulgates regulations (Attachment A) which provide, in part, for:

a. Encouraging the establishment of a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs in furtherance of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Act of 1968 (Attachment B).

b. Coordination of direct Federal development programs and projects with State, regional, and local planning and programs pursuant to Title IV of the Intergovernmental Cooperation Act of 1968.

c. Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Attachment C) and regulations of the Council on Environmental Quality.

This Circular supersedes Circular No. A-95, dated July 24, 1969, as amended by Transmittal Memorandum No. 1, dated December 27, 1969. It will become effective April 1, 1971.

2. Basis. This Circular has been prepared pursuant to:

a. Section 401(a) of the Intergovernmental Cooperation Act of 1968 which provides, in part, that

> "The President shall . . . establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development . . . "

and the President's Memorandum of November 8, 1968, to the Director of the Bureau of the Budget ("Federal Register," Vol. 33, No. 221, November 13, 1968) which provides:

> "By virtue of the authority vested in me by section 301 of Title 3 of the United States Code and section 401(a) of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577), I hereby delegate to you the authority vested in the President to establish the rules and regulations provided for in that section governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives.
>
> "In addition, I expect the Bureau of the Budget to generally coordinate the actions of the departments and agencies in exercising the new authorizations provided by the Intergovernmental Cooperation Act, with the objective of consistent and uniform action by the Federal Government."

b. Title IV, section 403, of the Intergovernmental Cooperation Act of 1968 which provides that:

> "The Bureau of the Budget, or such other agency as may be designated by the President, shall prescribe such rules and regulations as are deemed appropriate for the effective administration of this Title."

c. Section 204(c) of the Demonstration Cities and Metropolitan Development Act of 1966 which provides that:

> "The Bureau of the Budget, or such other agency as may be designated by the President, shall prescribe such rules and regulations as are deemed appropriate for the effective administration of this section," and

d. Reorganization Plan No. 2 of 1970 and Executive Order No. 11541 of July 1, 1970, which vest all functions of the

Bureau of the Budget or the Director of the Bureau of the Budget in the Director of the Office of Management and Budget.

3. Coverage. The regulations promulgated by this Circular (Attachment A) will have applicability to:

a. Under Part I, all projects (or significant changes thereto) for which Federal assistance is being sought under the programs listed in Attachment D. Limitations and provision for exceptions are noted therein.

b. Under Part II, all direct Federal development activities, including the acquisition, use, and disposal of Federal real property.

c. Under Part III, all Federal programs requiring, by statute or administrative regulation, a State plan as a condition or assistance.

d. Under Part IV, all Federal programs providing assistance to State, local, and regional projects and activities that are planned on a multijurisdictional basis.

4. Inquiries. Inquiries concerning this Circular may be addressed to the Office of Management and Budget, Washington, D.C. 20503, telephone (202)395-3031 (Government dial code 103-3031).

GEORGE P. SHULTZ
Director

Attachments

REGULATIONS UNDER SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966, TITLE IV OF THE INTERGOVERNMENTAL COOPERATION ACT OF 1968, AND SECTION 102 (2) (C) OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

PART I: PROJECT NOTIFICATION AND REVIEW SYSTEM

1. Purpose. The purpose of this Part is to:

a. Further the policies and directives of Title IV of the Intergovernmental Cooperation Act of 1968 by encouraging the establishment of a network of State, regional, and metropolitan planning and development clearinghouses which will aid in the coordination of Federal or federally assisted projects and programs with State, regional, and local planning for orderly growth and development;

b. Implement the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 for metropolitan areas within that network;

c. Implement, in part, requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, which require State and local views of the environmental impact of Federal or federally assisted projects;

d. Provide public agencies charged with enforcing State and local civil rights laws with opportunity to participate in the review process established under this Part;

e. Encourage, by means of early contact between applicants for Federal assistance and State and local governments and agencies, an expeditious process of intergovernmental coordination and review of proposed projects.

2. Notification.

a. Any agency of State or local government or any organization or individual undertaking to apply for assistance to a project under a Federal program listed in Attachment D will be required to notify the planning and development clearinghouse of the State (or States) and the region, if there is one, or of the metropolitan area in which the project is to be located, of its intent to apply for assistance. Notification will be accompanied by a summary description of the project for which assistance will be sought. The summary description will contain the following information:

(1) Identity of the applicant agency, organization or individual.

(2) The geographic location of the project to be assisted.

(3) A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that might be affected by the proposed projects.

(4) A statement as to whether the applicant has been advised by the Federal agency from which assistance is being sought concerning requirements for the submission of environmental impact information in connection with the proposed project, and the nature of such advice.

(5) The Federal program and agency under which assistance will be sought as indicated in the Catalog of Federal Domestic Assistance (April 1970 and subsequent editions).

(6) The estimated date by which time the applicant expects to formally file an application.

Many clearinghouses have developed notification forms and instructions. Applicants are urged to contact their clearinghouses for such information in order to expedite clearinghouse review.

b. In order to assure maximum time for effective coordination and so as not to delay the timely submission of the completed application to the Federal agency, such notifications should be sent at the earliest feasible time.

3. Clearinghouse functions. Clearinghouse functions include:

a. Evaluating the significance of proposed Federal or federally assisted projects to State, areawide or local plans and programs, as appropriate.

b. Receiving and disseminating project notifications to appropriate State agencies in the case of the State clearinghouse and to appropriate local governments and agencies in the case of regional or metropolitan clearinghouses; and providing liaison, as may be necessary, between such agencies or bodies and the applicant.

c. Assuring, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, that appropriate State, metropolitan, regional, or local agencies which are authorized to develop and enforce environmental standards are informed of and are given opportunity to review and comment on the environmental significance of proposed projects for which Federal assistance is sought.

d. Providing public agencies charged with enforcing State and local civil rights laws with opportunity to review and comment on the civil rights aspects of the project for which assistance is sought.

4. Consultation and review

a. State, metropolitan, and regional clearinghouses may have a period of thirty days after receipt of a project notification in which to inform State agencies and local or regional governments or agencies (including agencies authorized to develop and enforce environmental standards and public agencies charged with enforcing State and local civil rights laws) that may be affected by the proposed project and arrange, as may be necessary, to consult with the applicant thereon.

b. During this period and during the period in which the application is being completed, the clearinghouse may work with the applicant in the resolution of any problems raised by the proposed project.

c. Clearinghouses may have, if necessary, an additional 30 days to review the completed application and to transmit to the applicant any comments or recommendations the clearinghouse (or others) may have.

d. In the case of a project for which Federal assistance is sought by a special purpose unit of government, clearinghouses will assure that any unit of general local government, having jurisdiction over the area in which the project is to be located, has opportunity to confer, consult, and comment upon the project and the application.

e. Applicants will include with the completed application as submitted to the Federal agency:

(1) Any comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application; or

(2) A statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received.

f. Where regional or metropolitan areas are contiguous, coordinative arrangements should be established between the clearinghouses in such areas to assure that projects in one area which may have an impact on the development of a contiguous area are jointly studied. Any comments and recommendations made by or through a clearinghouse in one area on a project in a contiguous area will accompany the application for assistance to that project.

5. Subject matter of comments and recommendations. Comments and recommendations made by or through clearinghouses with respect to any project are for the purpose of assuring maximum consistency of such project with State, regional and local comprehensive plans. They are also intended to assist the Federal agency (or State agency, in the case of projects for which the State under certain Federal grants has final project approval) administering such a program in determining whether the project is in accord with applicable Federal law. Comments or recommendations, as may be appropriate, may include information about:

a. The extent to which the project contributes to the achievement of State, regional, metropolitan, and local objectives as specified in section 401(a) of the Intergovernmental Cooperation Act of 1968, as follows:

(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

(2) Wise development and conservation of natural resources, including land, water, minerals, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design.

c. As provided under section 102(2)(C) of the National Environmental Policy Act of 1969, the extent to which the project significantly affects the environment including consideration of:

(1) The environmental impact of the proposed project;

(2) Any adverse environmental effects which cannot be avoided should the proposed project be implemented;

(3) Alternatives to the proposed project;

(4) The relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity; and

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed project or action, should it be implemented.

d. The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.

e. In the case of a project for which assistance is being sought by a special purpose unit of government, whether the unit of general local government having jurisdiction over the area in which the project is to be located has applied, or plans to apply for assistance for the same or similar type project. This information is necessary to enable the Federal (or State) agency to make the judgments required under section 402 of the Intergovernmental Cooperation Act of 1968.

6. Federal agency procedures. Federal agencies having programs covered under this Part (see Attachment D) will develop appropriate procedures for:

a. Informing potential applicants for assistance under such programs of the requirements of this Part (1) in program information materials, (2) in response to inquiries respecting application procedures, (3) in pre-application conferences, or (4) by other means which will assure earliest contact between applicant and clearinghouses.

b. Assuring that all applications for assistance under programs covered by this part have been submitted to appropriate clearinghouses for review.

c. Notifying clearinghouses within seven days of any action (approvals, disapprovals, return for amendment, etc.) taken on applications that have been reviewed by such clearinghouses. Where a State clearinghouse has assigned an identification number to an application, the Federal agency will refer to such identification number in notifying clearinghouses of actions taken on the application.

d. Assuring, in the case of an application submitted by a special purpose unit of government, where accompanying comments indicate that the unit of general local government having jurisdiction over the area in which the project is to be located has submitted or plans to submit an application for assistance for the same or a similar type project, that appropriate considerations and preferences as specified in Section 402 of the Intergovernmental Cooperation Act of 1968, are accorded the unit of general local government. Where such preference cannot be so accorded, the agency shall supply, in writing, to the unit of general local government and the Office of Management and Budget its reasons therefor.

7. HUD housing programs. Because of the unique nature of the application and development process for the housing programs of the Department of Housing and Urban Development, a variation of the review procedure is necessary. For HUD programs in the 14.100 series listed in Attachment D, the following procedure for review will be followed:

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a. The HUD Area or Insuring Office will transmit to the appropriate State clearinghouse and metropolitan or regional clearinghouse a copy of the initial application for HUD program approval.

b. The clearinghouses will have 15 days to review the applications and to forward to the Area or Insuring Office any comments which they may have, including observations concerning the consistency of the proposed project with State and areawide development plans, the extent to which the proposed project will provide housing opportunities for all segments of the community and identification of major environmental concerns.

c. This procedure will include only applications involving new construction and will apply to:

(1) Subdivisions having 50 or more lots involving any HUD home mortgage insurance program.

(2) Multifamily projects having 100 or more dwelling units under any HUD mortgage insurance program, or under conventional or turnkey public housing programs.

(3) Mobile home courts with 100 or more spaces.

(4) College housing provided under the debt service or direct loan programs for 200 or more students.

All other applications for assistance under the HUD programs in the 14.100 series listed in Attachment D are exempt from the requirements of this Circular.

8. Reports and directories.

a. The Direct of the Office of Management and Budget may require reports, from time to time, on the implementation of this Part.

b. The Office of Management and Budget will maintain and distribute to appropriate Federal agencies a directory of State, regional, and metropolitan clearinghouses.

c. The Office of Management and Budget will notify clearinghouses and Federal agencies of any expected categories of projects under programs listed in Attachment D.

PART II: DIRECT FEDERAL DEVELOPMENT

1. Purpose. The purpose of this Part is to:

a. Provide State and local government with information on projected Federal development so as to facilitate coordination with State, regional and local plans and programs.

b. Provide Federal agencies with information on the relationship of proposed direct Federal development projects and activities to State, regional, and local plans and programs; and to assure maximum feasible consistency of Federal developments with State, regional, and local plans and programs.

c. Provide Federal agencies with information on the possible impact on the environment of proposed Federal development.

2. Coordination of direct Federal development projects with State, regional, and local development.

a. Federal agencies having responsibility for the planning and construction of Federal buildings and installations or other Federal public works or development or for the acquisition, use, and disposal of Federal land and real property will establish procedures for:

(1) Consulting with Governors, States, regional and metropolitan clearinghouses, and local elected officials at the earliest practicable stage in project or development planning on the relationship of any plan or project to the development plans and programs of the State, region, or localities in which the project is to be located.

(2) Assuring that any such Federal plan or project is consistent or compatible with State, regional, and local development plans and programs identified in the course of such consultations. Exceptions will be made only where there is clear justification.

(3) Providing State, metropolitan, regional, and local agencies which are authorized to develop and enforce environmental standards with adequate opportunity to review such Federal plans and projects pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. Any commitments of such agencies will accompany the environmental impact statement submitted by the Federal agency.

(4) Providing State and areawide agencies which are authorized to perform comprehensive health planning (under Sections 314a and 314b of the Public Health Service Act) with adequate opportunity to review Federal projects for construction and/or equipment involving capital expenditures exceeding $200,000 for modernization, conversion, and expansion of Federal inpatient care facilities, which alter the bed capacity or modify the primary function of the facility, as well as plans for provision of major new medical care services. (Excluded are projects to renovate or install mechanical systems, air conditioning systems, or other similar internal system modifications.) The comments of such agencies will accompany the plan and budget requests submitted by the Federal agency to the Office of Management and Budget or a certification that the agencies had been provided a reasonable time to comment and had failed to do so.

3. Use of clearinghouses. The State, regional, and metropolitan planning and development clearinghouses established pursuant to Part I will be utilized to the greatest extent practicable to effectuate the requirements of this Part. Agencies are urged to establish early contact with clearinghouses to work out arrangements for carrying out the consultation and review required under this Part, including identification of types of projects considered appropriate for consultation and review.

PART III: STATE PLANS

1. Purpose. The purpose of this Part is to provide Federal agencies with information about the relationship of State plans required under various Federal programs to State comprehensive planning and to other State plans.

2. Review of State plans. To the extent not presently required by statute or administrative regulation, Federal agencies administering programs requiring by statute or regulation a State plan as a condition of assistance under such programs will require that the Governor be given the opportunity to comment on the relationship of such State plan to comprehensive and other State plans and programs. Governors will be afforded a period of forty-five days in which to make such comments, and any such comments will be transmitted with the plan.

3. State plan. A State plan under this Part is defined to include any required supporting reports or documentation that indicate the programs, projects, and activities for which Federal funds will be utilized.

PART IV: COORDINATION OF PLANNING IN MULTIJURISDICTIONAL AREAS

1. Policies and objectives. The purposes of this Part are:

a. To encourage and facilitate State and local initiative and responsibility in developing organizational and procedural arrangements for coordinating comprehensive and functional planning activities.

b. To eliminate overlap, duplication, and competition in State and local planning activities assisted or required under Federal programs and to encourage the most effective use of State and local resources available for development planning.

c. To minimize inconsistency among Federal administrative and approval requirements placed on State, regional, and metropolitan development planning activities.

d. To encourage the States to exercise leadership in delineating and establishing a system of planning and development districts or regions in each State, which can provide a consistent geographic base for the coordination of Federal, State and local development programs.

2. Common or consistent planning and development districts or regions. Prior to the designation or redesignation (or approval thereof) of any planning and development district or region under any Federal program, Federal agency procedures will provide a period of thirty days for the Governor (s) of the State(s) in which the district or region will be located to review the boundaries thereof and comment upon its relationship to planning and development districts or regions established by the State. Where the State has established such planning and development districts, the boundaries of designated areas will conform to them unless there is clear justification for not doing so. Where the State has not established planning and development districts or regions which provide a basis for evaluation of the boundaries of the area proposed for designation, major units of general local government and Federal agencies administering related programs in such area will also be consulted prior to designation of the area to assure consistency with districts established under interlocal agreement and under related Federal programs. OMB will be notified by the appropriate Federal agency of any proposed designation that

is being considered by the Governor or being coordinated with other Federal agencies or local governments and will be informed of the designation when it is made.

3. Common and consistent planning bases and coordination of related activities in multijurisdictional areas. Each agency will develop checkpoint procedures and requirements for applications for planning and development assistance under appropriate programs to assure the fullest consistency and coordination with related planning and development being carried on under other Federal programs or under State and local programs in any multijurisdictional areas.

The checkpoint procedures will incorporate provisions covering the following points:

a. Identification by the applicant of planning activities being carried on for related programs within the multijurisdictional area, including those covering a larger area within which such multijurisdictional area is located, subareas of the area, and areas overlapping the multijurisdictional area. Metropolitan or regional clearinghouses established under Part I of this Circular, may assist in providing such identification.

b. Evidence of explicit organizational or procedural arrangements that have been or are being established by the applicant to assure maximum coordination of planning for such related functions, programs, projects and activities within the multijurisdictional area. Such arrangements might include joint or common boards of directors or planning staffs, umbrella organizations, common referral or review procedures, information exchanges, etc.

c. Evidence of cooperative arrangements that have been or are being made by the applicant respecting joint or common use of planning resources (funds, personnel, facilities, and services, etc.) among related programs within the area; and

d. Evidence that planning being assisted will proceed from base data, statistics, and projections (social, economic, demographic, etc.) and assumptions that are common to or consistent with those being employed [illegible] planning related activities within the area.

4. Joint funding. Where it will enhance the quality, comprehensive scope, and coordination of planning in multijurisdictional areas,

Federal agencies will, to the extent practicable provide for joint funding of planning activities being carried on therein.

5. Coordination of agency procedures and requirements. With respect to the steps called for in paragraphs 2 ans 3 of this Part, departments and agencies will develop for relevant programs appropriate draft procedures and requirements. Copies of such drafts will be furnished to the Director of the Office of Management and Budget and to the heads of departments and agencies administering related programs. The Office, in consultation with the agencies, will review the draft procedures to assure the maximum obtainable consistency among them.

PART V: DEFINITIONS

Terms used in this Circular will have the following meanings:

1. Federal agency -- any department, agency, or instrumentality in the executive branch of the Government and any wholly owned Government corporation.

2. State -- any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State.

3. Unit of general local government -- any city, county, town, parish, village, or other general purpose political subdivision of a State.

4. Special purpose unit of local government -- any special district, public purpose corporation, or other strictly limited purpose political subdivision of a State, but shall not include a school district.

5. Federal assistance, Federal financial assistance, Federal assistance programs, or federally assisted program -- programs that provide assistance through grant or contractual arrangements. They include technical assistance programs, or programs providing assistance in the form of loans, loan guarantees, or insurance. The term does not include any annual payment by the United States to the District of Columbia authorized by article VI of the District of Columbia Revenue Act of 1947 (D.C. Code sec. 47-2501a and 47-2501b).

6. Comprehensive planning, to the extent directly related to area needs or needs of a unit of general local government, includes the following:

a. Preparation, as a guide for governmental policies and action, of general plans with respect to:

(1) Pattern and intensity of land use,

(2) Provision of public facilities (including transportation facilities) and other government services,

(3) Effective development and utilization of human and natural resources.

b. Preparation of long range physical and fiscal plans for such action.

c. Programming of capital improvements and other major expenditures, based on a determination of relative urgency, together with definitive financing plans for such expenditures in the earlier years of the program.

d. Coordination of all related plans and activities of the State and local governments and agencies concerned.

e. Preparation of regulatory and administrative measures in support of the foregoing.

7. Metropolitan area -- a standard metropolitan statistical area as established by the Office of Management and Budget, subject, however, to such modifications and extensions as the Office of Management and Budget may determine to be appropriate for the purposes of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and these Regulations.

8. Areawide agency -- an official State or metropolitan or regional agency empowered under State or local laws or under an interstate compact or agreement to perform comprehensive planning in an area; an organization of the type referred to in section 701(g) of the Housing Act of 1954; or such other agency or instrumentality as may be designated by the Governor (or in the case of metropolitan areas crossing State lines, any one or more of such agencies or instrumentalities as may be designated by the Governors of the States involved) to perform such planning.

9. Planning and development clearinghouse or clearinghouse includes:

a. An agency of the State Government designated by the Governor or by State law.

b. A nonmetropolitan regional comprehensive planning agency (herein referred to as "regional clearinghouse") designated by the Governor (or Governors in the case of regions extending into more than one State) or by State law.

c. A metropolitan areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

10. Multijurisdictional area -- any geographical area comprising, encompassing, or extending into more than one unit of general local government.

11. Planning and development district or region -- a multijurisdictional area that has been formally designated or recognized as an appropriate area for planning under State law or Federal program requirements.

12. Direct Federal development -- planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies.

SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966, as amended (80 Stat. 1263, 82 Stat. 208)

"Sec. 204. (a) All applications made after June 30, 1967 for Federal loans or grants to assist in carrying out open-space land projects or for planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review--

"(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

"(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

"(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

"(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c), or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

"(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this title, involves a major change in the project covered by the application prior to such amendment.

"(c) The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section."

TITLE IV OF THE INTERGOVERNMENTAL COOPERATION ACT OF 1968 (82 Stat. 1103)

"TITLE IV -- COORDINATED INTERGOVERNMENTAL POLICY AND ADMINISTRATION OF DEVELOPMENT ASSISTANCE PROGRAMS"

"DECLARATION OF DEVELOPMENT ASSISTANCE POLICY"

"Sec. 401. (a) The economic and social development of the Nation and the achievement of satisfactory levels of living depend upon the sound and orderly development of all areas, both urban and rural. Moreover, in a time of rapid urbanization, the sound and orderly development of urban communities depends to a large degree upon the social and economic health and the sound development of smaller communities and rural areas. The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives. Such rules and regulations shall provide for full consideration of the concurrent achievement of the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between such objectives when they conflict:

"(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

"(2) Wise development and conservation of natural resources, including land, water, minerals, wildlife, and others;

"(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

"(4) Adequate outdoor recreation and open space;

"(5) Protection of areas of unique natural beauty, historical and scientific interest;

"(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

"(7) Concern for high standards of design.

"(b) All viewpoints -- national, regional, State and local -- shall, to the extent possible, be fully considered and taken into account in planning Federal or federally assisted development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

"(c) To the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including but not limited to housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

"(d) Each Federal department and agency administering a development assistance program shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.

"(e) Insofar as possible, systematic planning required by individual Federal programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning."

"FAVORING UNITS OF GENERAL LOCAL GOVERNMENT"

"Sec. 402. Where Federal law provides that both special-purpose units of local government and units of general local government are eligible to receive loans or grants-in-aid, heads of Federal departments and agencies shall, in the absence of substantial reasons to the contrary, make such loans or grants-in-aid to units of general local government rather than special-purpose units of local government."

"RULES AND REGULATIONS"

"Sec. 403. The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this title."

SECTION 102 (2) (C) OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (83 Stat. 853)

"Sec. 102. The Congress authorizes and directs that, to the fullest extent possible; (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall--....

> "(C) include in every recommendation or report on on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--
>
> > "(i) the environmental impact of the proposed action,
> >
> > "(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
> >
> > "(iii) alternatives to the proposed action,
> >
> > "(iv) the relationship between local short-term use of man's environment and the maintenance and enhancement of long-term productivity, and
> >
> > "(v) any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

"Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes;...."

ATTACHMENT D (revised)
Circular No. A-95
Revised

COVERAGE OF PROGRAMS UNDER ATTACHMENT A, Part I

1. Programs are listed below pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and the Intergovernmental Cooperation Act of 1968. They are referenced by Catalog of Federal Domestic Assistance identification numbers (1971 Edition).

2. Heads of Federal departments and agencies may, with the concurrence of the Office of Management and Budget, exclude certain categories of projects or activities under listed programs from the requirements of Attachment A, Part I. OMB concurrence will be based on the following criteria:

a. Lack of geographic identifiability with respect to location or impact (e.g., certain types of technical studies);

b. Small scale or size;

c. Essentially local impact (within the applicant jurisdiction); and

d. Other characteristics that make review impractical. OMB will notify clearinghouses of such exclusions.

3. Covered programs

Department of Agriculture

Farmers Home Administration

10.400	Comprehensive Areawide Water and Sewer Planning Grants
10.409	Irrigation, Drainage and Other Soil and Conservation Loans
10.414	Resource Conservation and Development Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans

Soil Conservation Service

10.901	Resource Conservation and Development
10.904	Watershed Protection and Flood Prevention

Department of Commerce

Economic Development Administration

11.300	Economic Development -- Grants and Loans for Public Works and Development Facilities
11.302	Economic Development -- Planning Assistance
11.303	Economic Development -- Technical Assistance

Department of Defense

Department of the Army, Office of the Chief of Engineers

12.101	Beach Erosion Control
12.106	Small Flood Control Projects
12.107	Small Navigation Projects
12.108	Snagging and Clearing for Flood Control

Department of Health, Education, and Welfare

Health Services and Mental Health Administration

13.206	Comprehensive Health Planning -- Areawide Grants
13.220	Health Facilities Construction -- Hospitals and Public Health Centers
13.235	Mental Health -- Community Assistance Grants for Narcotic Addiction (Construction Only)
13.249	Regional Medical Programs -- Operational and Planning Grants (Planning and Construction Only)

13.253	Health Facilities Construction -- Loans and Loan Guarantees

National Institutes of Health

13.340	Health Professions Facilities Construction
13.350	Medical Library Assistance -- Regional Medical Libraries
13.369	Schools of Nursing -- Facilities Construction

Office of Education

13.408	Construction of Public Libraries
13.356	Higher Education Academic Facilities -- State Comprehensive Planning
13.457	Higher Education Academic Facilities Construction -- Interest Subsidization
13.459	Higher Education Academic Facilities Construction -- Public Community Colleges and Technical Institutes
13.477	School Assistance in Federally Affected Areas -- Construction
13.493	Vocational Education -- Basic Grants to States (Construction Only)

Social and Rehabilitation Service

13.711	Juvenile Delinquency Planning, Prevention, and Rehabilitation (Planning and Construction Only)
13.746	Vocational Rehabilitation Services -- Basic Support (Construction Only)
13.753	Developmentally Disabled - Basic support (Construction Only)
13.755	Vocational Rehabilitation - Construction Grants

Department of Housing and Urban Development

Housing Production and Mortgage Credit/FHA

Note: The following programs are subject to the limitations and procedures set forth in paragraph 7, Part I, of the Circular.

14.100	Housing for Educational Institutions
14.103	Interest Reduction Payments - Rental and Cooperative Housing for Lower Income Families (236)
14.105	Interest Subsidy - Homes for Lower Income Families (235(i))
14.112	Mortgage Insurance - Construction or Rehabilitation of Condominium Projects (234(d))
14.115	Mortgage Insurance - Development of Sales Type Cooperative Projects (213)
14.117	Mortgage Insurance - Homes (203(b))
14.118	Mortgage Insurance - Homes for Certified Veterans (203(b)
14.119	Mortgage Insurance - Homes for Disaster Victims (203(h))
14.120	Mortgage Insurance - Homes for Low and Moderate Income Families (221(d)(2))
14.121	Mortgage Insurance - Homes in Outlying Areas (203(i))
14.122	Mortgage Insurance - Homes in Urban Renewal Areas (220 homes)
14.124	Mortgage Insurance - Investor Sponsored Cooperative Housing (213)
14.125	Mortgage Insurance - Land Development and New Communities (Title X)

14.126	Mortgage Insurance - Management Type Cooperative Projects (213)
14.127	Mortgage Insurance - Mobile Home Courts (207)
14.134	Mortgage Insurance - Rental (207)
14.135	Mortgage Insurance - Rental Housing for Moderate Income Families (221(d)(4))
14.137	Mortgage Insurance - Rental Housing for Low and Moderate Income Families, Market Interest Rate (221(d)(3))
14.138	Mortgage Insurance - Rental Housing for the Elderly (231)
14.139	Mortgage Insurance - Rental Housing in Urban Renewal Areas (220)
14.146	Public Housing - Acquisition, Construction, Rehabilitation (New Construction Only)
14.149	Rent Supplements - Rental Housing for Low Income Families

Community Planning and Management

14.203	Comprehensive Planning Assistance
14.207	New Communities -- Loan Guarantees
14.208	New Communities -- Supplementary Grants
14.214	Urban Systems Engineering Demonstration Grants

Community Development

14.300	Model Cities Supplementary Grants
14.301	Basic Water and Sewer Facilities - Grants
14.303	Open Space Land Programs
14.304	Public Facility Loans

14.306	Neighborhood Development
14.307	Urban Renewal Projects

Department of the Interior

Bureau of Outdoor Recreation

15.400	Outdoor Recreation -- Acquisition & Development
15.401	Outdoor Recreation State Planning -- Financial Assistance

Bureau of Reclamation

15.501	Irrigation Distribution System Loans
15.503	Small Reclamation Projects

National Park Service

15.904	Historic Preservation

Department of Justice

Law Enforcement Assistance Administration

16.500	Law Enforcement Assistance -- Comprehensive Planning Grants
16.501	Law Enforcement Assistance -- Discretionary Grants
16.502	Law Enforcement Assistance -- Improving and Strengthening Law Enforcement

Department of Labor

Manpower Administration

17.205	Cooperative Area Manpower Planning System

Department of Transportation

Federal Aviation Administration

20.102	Airport Development Aid Program
20.103	Airport Planning Grant Program

Federal Highway Administration

20.201	Forest Highways
20.204	Highway Beautification -- Landscaping and Scenic Enhancement
20.205	Highway Planning and Construction
20.206	Highway Planning and Research Studies
20.209	Public Lands Highways
20.211	Traffic Operations Program to Increase Capacity and Safety (Construction Only)

Urban Mass Transportation Administration

20.500	Urban Mass Transportaion Capital Improvement Grants (Planning & Construction Only)
20.501	Urban Mass Transportation Capital Improvement Loans (Planning & Construction Only)
20.505	Urban Mass Transportation Technical Studies Grants (Planning & Construction Only)

Appalachian Regional Commission

23.003	Appalachian Development Highway System
23.004	Appalachian Health Demonstrations (Planning and Construction only)
23.008	Appalachian Local Access Roads
23.010	Appalachian Mine Area Restoration
23.012	Appalachian Vocational Education Facilities

National Science Foundation

47.036	Intergovernmental Science Programs

Office of Economic Opportunity

49.002	Community Action (excluding administration, research, training and technical assistance, and evaluation).

Water Resources Council

65.001	Water Resources Planning

Environmental Protection Agency

Air Pollution Control Office

66.001	Air Pollution Control Program Grants (Planning Only)

Solid Waste Management Office

66.300	Solid Waste Demonstration and Resource Recovery System Grants
66.301	Solid Waste Planning Grants

Water Quality Office

66.400	Construction Grants for Wastewater Treatment Works
66.401	Water Pollution Control Comprehensive Basin Planning Grants
66.407	Water Pollution Control - State and Interstate Program Grants

223<

ATTACHMENT G

EXECUTIVE ORDER 11507

Executive Order 11507

PREVENTION, CONTROL, AND ABATEMENT OF AIR AND WATER POLLUTION AT FEDERAL FACILITIES

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Clean Air Act, as amended (42 U.S.C. 1857), the Federal Water Pollution Control Act, as amended (33 U.S.C. 466), and the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

SECTION 1. *Policy.* It is the intent of this order that the Federal Government in the design, operation, and maintenance of its facilities shall provide leadership in the nationwide effort to protect and enhance the quality of our air and water resources.

SEC. 2. *Definitions.* As used in this order:

(a) The term "respective Secretary" shall mean the Secretary of Health, Education, and Welfare in matters pertaining to air pollution control and the Secretary of the Interior in matters pertaining to water pollution control.

(b) The term "agencies" shall mean the departments, agencies, and establishments of the executive branch.

(c) The term "facilities" shall mean the buildings, installations, structures, public works, equipment, aircraft, vessels, and other vehicles and property, owned by or constructed or manufactured for the purpose of leasing to the Federal Government.

(d) The term "air and water quality standards" shall mean respectively the quality standards and related plans of implementation, including emission standards, adopted pursuant to the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended, or as prescribed pursuant to section 4(b) of this order.

(e) The term "performance specifications" shall mean permissible limits of emissions, discharges, or other values applicable to a particular Federal facility that would, as a minimum, provide for conformance with air and water quality standards as defined herein.

(f) The term "United States" shall mean the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

SEC. 3. *Responsibilities.* (a) Heads of agencies shall, with regard to all facilities under their jurisdiction:

(1) Maintain review and surveillance to ensure that the standards set forth in section 4 of this order are met on a continuing basis.

(2) Direct particular attention to identifying potential air and water quality problems associated with the use and production of new materials and make provisions for their prevention and control.

(3) Consult with the respective Secretary concerning the best techniques and methods available for the protection and enhancement of air and water quality.

(4) Develop and publish procedures, within six months of the date of this order, to ensure that the facilities under their jurisdiction are in conformity with this order. In the preparation of such procedures there shall be timely and appropriate consultation with the respective Secretary.

(b) The respective Secretary shall provide leadership in implementing this order, including the provision of technical advice and assistance to the heads of agencies in connection with their duties and responsibilities under this order.

(c) The Council on Environmental Quality shall maintain continuing review of the implementation of this order and shall, from time to time, report to the President thereon.

SEC. 4. *Standards.* (a) Heads of agencies shall ensure that all facilities under their jurisdiction are designed, operated, and maintained so as to meet the following requirements:

(1) Facilities shall conform to air and water quality standards as defined in section 2(d) of this order. In those cases where no such air or water quality standards are in force for a particular geographical area, Federal facilities in that area shall conform to the standards established pursuant to subsection (b) of this section. Federal facilities shall also conform to the performance specifications provided for in this order.

(2) Actions shall be taken to avoid or minimize wastes created through the complete cycle of operations of each facility.

(3) The use of municipal or regional waste collection or disposal systems shall be the preferred method of disposal of wastes from Federal facilities. Whenever use of such a system is not feasible or appropriate, the heads of agencies concerned shall take necessary measures for the satisfactory disposal of such wastes, including:

(A) When appropriate, the installation and operation of their own waste treatment and disposal facilities in a manner consistent with this section.

(B) The provision of trained manpower, laboratory and other supporting facilities as appropriate to meet the requirements of this section.

(C) The establishment of requirements that operators of Federal pollution control facilities meet levels of proficiency consistent with the operator certification requirements of the State in which the facility is located. In the absence of such State requirements the respective Secretary may issue guidelines, pertaining to operator qualifications and performance, for the use of heads of agencies.

(4) The use, storage, and handling of all materials, including but not limited to, solid fuels, ashes, petroleum products, and other chemical and biological agents, shall be carried out so as to avoid or minimize the possibilities for water and air pollution. When appropriate, preventive measure shall be taken to entrap spillage or discharge or otherwise to prevent accidental pollution. Each agency, in consultation with the respective Secretary, shall establish appropriate emergency plans and procedures for dealing with accidental pollution.

(5) No waste shall be disposed of or discharged in such a manner as could result in the pollution of ground water which would endanger the health or welfare of the public.

(6) Discharges of radioactivity shall be in accordance with the applicable rules, regulations, or requirements of the Atomic Energy Commission and with the policies and guidance of the Federal Radiation Council as published in the FEDERAL REGISTER.

(b) In those cases where there are no air or water quality standards as defined in section 2(d) of this order in force for a particular geographic area or in those cases where more stringent requirements are deemed advisable for Federal facilities, the respective Secretary, in consultation with appropriate Federal, State, interstate, and local agencies, may issue regulations establishing air or water quality standards for the purpose of this order, including related schedules for implementation.

(c) The heads of agencies, in consultation with the respective Secretary, may from time to time identify facilities or uses thereof which are to be exempted, including temporary relief, from provisions of this order in the interest of national security or in extraordinary cases where it is in the national interest. Such exemptions shall be reviewed periodically by the respective Secretary and the heads of the agencies concerned. A report on exemptions granted shall be submitted to the Council on Environmental Quality periodically.

SEC. 5. *Procedures for abatement of air and water pollution at existing Federal facilities.* (a) Actions necessary to meet the requirements of subsections (a)(1) and (b) of section 4 of this order pertaining to air and water pollution at existing facilities are to be completed or under way no later than December 31, 1972. In cases where an enforcement conference called pursuant to law or air and water quality standards require earlier actions, the earlier date shall be applicable.

(b) In order to ensure full compliance with the requirements of section 5(a) and to facilitate budgeting for necessary corrective and preventive measures, heads of agencies shall present to the Director of the Bureau of the Budget by June 30, 1970, a plan to provide for such improvements as may be necessary to meet the required date. Subsequent revisions needed to keep any such plan up-to-date shall be promptly submitted to the Director of the Bureau of the Budget.

(c) Heads of agencies shall notify the respective Secretary as to the performance specifications proposed for each facility to meet the requirements of subsections 4 (a)(1) and (b) of this order. Where the respective Secretary finds that such performance specifications are not adequate to meet such requirements, he shall consult with the agency head and the latter shall thereupon develop adequate performance specifications.

(d) As may be found necessary, heads of agencies may submit requests to the Director of the Bureau of the Budget for extensions of time for a project beyond the time specified in section 5(a). The Director, in consultation with the respective Secretary, may approve such requests if the Director deems that such project is not technically feasible or immediately necessary to meet the requirements of subsections 4 (a) and (b). Full justification as to the extraordinary circumstances necessitating any such extension shall be required.

(e) Heads of agencies shall not use for any other purpose any of the amounts appropriated and apportioned for corrective and preventive measures necessary to meet the requirements of subsection (a) for the fiscal year ending June 30, 1971, and for any subsequent fiscal year.

SEC. 6. *Procedures for new Federal facilities.* (a) Heads of agencies shall ensure that the requirements of section 4 of this order are considered at the earliest possible stage of planning for new facilities.

(b) A request for funds to defray the cost of designing and constructing new facilities in the United States shall be included in the annual budget estimates of an agency only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility will meet the requirements of section 4 of this order.

(c) Heads of agencies shall notify the respective Secretary as to the performance specifications proposed for each facility when action is necessary to meet the requirements of subsections 4(a) (1) and (b) of this order. Where the respective Secretary finds that such performance specifications are not adequate to meet such requirements he shall consult with the agency head and the latter shall thereupon develop adequate performance specifications.

(d) Heads of agencies shall give due consideration to the quality of air and water resources when facilities are constructed or operated outside the United States.

SEC. 7. *Procedures for Federal water resources projects.* (a) All water resources projects of the Departments of Agriculture, the Interior, and the Army, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission shall be consistent with the requirements of section 4 of this order. In addition, all such projects shall be presented for the consideration of the Secretary of the Interior at the earliest feasible stage if they involve proposals or recommendations with respect to the authorization or construction of any Federal water resources project in the United States. The Secretary of the Interior shall review plans and supporting data for all such projects relating to water quality, and shall prepare a report to the head of the responsible agency describing the potential impact of the project on water quality, including recommendations concerning any changes or other measures with respect thereto which he considers to be necessary in connection with the design, construction, and operation of the project.

(b) The report of the Secretary of the Interior shall accompany at the earliest practicable stage any report proposing authorization or construction, or a request for funding, of such a water resource project. In any case in which the Secretary of the Interior fails to submit a report within 90 days after receipt of project plans, the head of the agency concerned may propose authorization, construction, or funding of the project without such an accompanying report. In such a case, the head of the agency concerned shall explicitly state in his request or report concerning the project that the Secretary of the Interior has not reported on the potential impact of the project on water quality.

Sec. 8. *Saving provisions.* Except to the extent that they are inconsistent with this order, all outstanding rules, regulations, orders, delegations, or other forms of administrative action issued, made, or otherwise taken under the orders superseded by section 9 hereof or relating to the subject of this order shall remain in full force and effect until amended, modified, or terminated by proper authority.

Sec. 9. *Orders superseded.* Executive Order No. 11282 of May 26, 1966, and Executive Order No. 11288 of July 2, 1966, are hereby superseded.

Richard Nixon

The White House,
February 4, 1970.

[F.R. Doc. 70-1566; Filed, Feb. 4, 1970; 12:33 p.m.]

228<

ATTACHMENT H

EXECUTIVE ORDER 11514

Executive Order 11514

PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

SEC. 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2)(C) of the Act.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

SEC. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget,", the following: "the Director of the Office of Science and Technology, ".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) shall assist the President in directing the affairs of the Cabinet Committee."

(5) By deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91-190)".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

Richard Nixon

THE WHITE HOUSE,
March 5, 1970.

[F.R. Doc. 70-2861; Filed, Mar. 5, 1970; 2:29 p.m.]

ATTACHMENT I

EXECUTIVE ORDER 11296

PRESIDENTIAL DOCUMENTS

TITLE 3--THE PRESIDENT

Executive Order 11296

EVALUATION OF FLOOD HAZARD IN LOCATING FEDERALLY OWNED OR FINANCED BUILDINGS, ROADS, AND OTHER FACILITIES, AND IN DISPOSING OF FEDERAL LANDS AND PROPERTIES

WHEREAS uneconomic uses of the Nation's flood plains are occurring and potential flood losses are increasing despite substantial efforts to control floods; and

WHEREAS national and regional studies of areas and property subject to flooding indicate a further increase in flood damage potential and flood losses, even with continuing investment in flood protection structures; and

WHEREAS the Federal Government has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually disposes of thousands of acres of Federal lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

WHEREAS the availability of Federal loans and mortgage insurance and land use planning programs are determining factors in the utilization of lands:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. The heads of the executive agencies shall provide leadership in encouraging a broad and unified effort to prevent uneconomic uses and development of the Nation's flood plains and, in particular, to lessen the risk of flood losses in connection with Federal lands and installations and federally financed or supported improvements. Specifically:

(1) All executive agencies directly responsible for the construction of Federal buildings, structures, roads, or other facilities shall evaluate flood hazards when planning the location of new facilities and, as far as practicable, shall preclude the uneconomic, hazardous, or unnecessary use of flood plains in connection with such facilities. With respect to existing Federally owned properties which have suffered flood damage or which may be subject thereto, the responsible agency head shall require conspicuous delineation of past and probable flood heights so as to assist in creating public awareness of and knowledge about flood hazards. Whenever practical and economically feasible, flood proofing measures shall be applied to existing facilities in order to reduce flood damage potential.

(2) All executive agencies responsible for the administration of Federal grant, loan, or mortgage insurance programs involving the construction of buildings, structures, roads, or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the exposure of facilities to potential flood damage and the need for future Federal expenditures for flood protection and flood disaster relief, shall, as far as practicable, preclude the uneconomic, hazardous, or unnecessary use of flood plains in such connection.

(3) All executive agencies responsible for the disposal of Federal lands or properties shall evaluate flood hazards in connection with lands or properties proposed for disposal to non-Federal public instrumentalities or private interests and, as may be desirable in order to minimize future Federal expenditures for flood protection and flood disaster relief and as far as practicable, shall attach appropriate restrictions with respect to uses of the lands or properties by the purchaser and his successors and may withhold such lands or properties from disposal. In carrying out this paragraph, each executive agency may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the disposal documents.

(4) All executive agencies responsible for programs which entail land use planning shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved.

SECTION 2. As may be permitted by law, the head of each executive agency shall issue appropriate rules and regulations to govern the carrying out of the provisions of Section 1 of this order by his agency.

SECTION 3. Requests for flood hazard information may be addressed to the Secretary of the Army or, in the case of lands lying in the basin of the Tennessee River, to the Tennessee Valley Authority. The Secretary or the Tennessee Valley Authority shall provide such information as may be available, including requested guidance on flood proofing. The Department of Agriculture, Department of the Interior, Department of Commerce, Department of Housing and Urban Development, and Office of Emergency Planning, and any other executive agency which may have information and data relating to floods shall cooperate with the Secretary of the Army in providing such information and in developing procedures to process information requests.

SECTION 4. Any requests for appropriations for Federal construction of new buildings, structures, roads, or other facilities transmitted to the Bureau of the Budget by an executive agency shall be accompanied by a statement by the head of the agency on the findings of his agency's evaluation and consideration of flood hazards in the development of such requests.

SECTION 5. As used in this order, the term "executive agency" includes any department, establishment, corporation, or other organizational entity of the executive branch of the Government.

SECTION 6. The executive agencies shall proceed immediately to develop such procedures, regulations, and information as are provided for in, or may be necessary to carry out, the provisions of Sections 1, 2, and 3 of this order. In other respects this order shall take effect on January 1, 1967.

LYNDON B. JOHNSON

THE WHITE HOUSE,
August 10, 1966.

[F.R. Doc. 66-8838; Filled, Aug. 10, 1966; 12:14 p.m.]

ATTACHMENT J

NEPA AND THE COURTS

NEPA AND THE COURTS

In the three years since the National Environmental Policy Act (NEPA) was enacted, the Federal Courts have been called upon to enforce its provisions in widely varying factual situations. The courts decisions have given important interpretations to many aspects of NEPA. The following is a representative listing of the court decisions.

UNITED STATES COURTS OF APPEALS

Arlington Coalition v. Volpe, 3 ERC 1995, 2 ELR 20162 (4th Cir. 4/4/72). The court enjoined construction and acquisition of right-of-way for Arlington I-66 pending reconsideration of the proposed location. The court held that a 102 statement is required for the project which, although conceived before January 1, 1970, received design approval on January 21, 1971.

Calvert Cliffs' Coordinating Comm. v. AEC, 449 F.2d 1109, 2 ERC 1779, 1 ELR. 20346 (D.C. Cir. 7/23/71). The court found the AEC's rules for implementing NEPA in licensing nuclear power plants invalid in four respects: (1) the rules failed to require hearing boards to consider environmental factors unless raised by the regulatory staff or outside persons; (2) they excluded nonradiological environmental issues in all cases where the notice of hearing was published before 3/4/71; (3) they prohibited reconsideration of water quality impacts where a certification of compliance with State standards had been obtained; and (4) they failed to provide for environmental review of cases in which a construction permit had been granted prior to NEPA's effective data but the time was not yet ripe for granting an operating license.

Committee for Nuclear Responsibility v. Seaborg, 3 ERC 1126, 1210, 1256, 1 ELR 20469 (D.C. Cir. 10/5/71, 10/28/71, 11/3/71). The court reversed a summary judgment for defendants, holding that plaintiffs had alleged a legally sufficient claim that the AEC's 102 statement on the underground nuclear test Cannikin was deficient under NEPA. The court later upheld the district judge's order requiring release of Government documents, which were not part of the 102 statement, discussing environmental aspects of the proposed test. However, the court refused to stay the test pendente lite. Finally, after release of the documents, the court refused on national security grounds to delay the test--without deciding whether NEPA had been satisfied. (The Supreme Court later upheld this refusal.)

Daly v. Volpe (DC WWash) 4 ERC 1486 (9/15/72). State that receives federal grants-in-aid for proposed highway construction must comply with National Environmental Policy Act and failure to comply with Act subjects state officials to jurisdiction of federal district court in property owners' suit challenging highway construction. National Environmental Policy Act is not satisfied by environmental impact statement that fails to list all adverse environmental effects of proposed federal-aid highway, that does not discuss highway's unavoidable harmful effects, that fails to detail cost of land, construction materials, and labor, that fails to describe resources irretrievably lost by highway's construction, and that was considered by Federal Highway Administration for only one day before receiving agency approval. State and federal agencies' environmental impact statement submission that affords insufficient opportunity for public to comment on environmental impact of proposed federal-aid highway does not satisfy National Environmental Policy Act, and permits federal district court to direct state agency to publish, in newspaper having general circulation in vicinity of challenged highway segment, notice that includes summary of proposal, map of proposed highway, discussion of alternative routes, notification that statement is available for inspection, and assurance that individual views will be considered; agency, however, is not required to hold new public hearing on proposal.

Ely v. Velde, 451 F2d 1130, 3 ERC 1280, 1 ERL 20612 (4th Cir. 11/8/71). The court, in reversing a district court decision, held that the Law Enforcement Assistance Administration must prepare a 102 statement on the portion of a block grant to the State of Virginia that will be used to construct a prison facility in a historic area.

Environmental Defense Fund v. Froehlke (CA8) 4 ERC 1829 (1/5/73). National Environmental Policy Act authorizes federal district court to consider whether Corps of Engineers' decision to construct Cache River channelization project arbitrarily and capriciously violated substantive policies of Act, even though Congress appropriated money for project after corps filed project's environmental impact statement.

Greene County Planning Bd. v. FPC, 455 F2d 412, 3 ERC 1595, 2 ELR 20017 (2d Cir. 1/17/72). On a petition to review an FPC authorization for the Galboa-Leeda transmission line, the court found the FPC's procedures for implementing NEPA deficient. The court rules that the FPC staff must itself prepare a draft 102 statement, prior to the public hearing, rather than treating as the draft statement the environmental report prepared by the applicant. However, the court refused to disturb the authorizations for two other transmission lines, despite noncompliance with NEPA, because the petitioners had failed to object to those authorizations or to seek court review of them within the time allowed by statute. Finally, the court declined to require the FPC or the applicant to pay the expenses incurred by the petitioners in challenging the authorizations. (The Government's petition for cert. is pending.)

Lathan v. Volpe, 455 F.2d 1111, 3 ERC 1362, 1 ELR 20602 (9th Cir. 11/15/71). The court held that citizens were entitled to a preliminary injunction against further acquisition of property by the State of Washington for Interstate 90. The court found that defendant's contention that a 102 statement was not required until the final approval stage was at odds with the Act's concern that statements be prepared before it is too late to adjust the plans so as to minimize adverse environmental effects.

National Helium Corp. v. Morton, 455 F. 2d 650, 3 ERC 1129, 1 ELR 20478 (10th Cir. 10/4/71). The court upheld a preliminary injunction against the Interior Department's cancellation of contracts to buy helium, on the basis of noncompliance with NEPA.

NRDC v. Morton, 3 ERC 1558, 2 ELR 20029 (D.C. Cir. 1/13/72). The court affirmed the district court's ruling that the Interior Department's 102 statement on a proposed sale of leases for oil and gas extraction on the Outer Continental Shelf was legally inadequate. The court held that the 102 statement was required to discuss the environmental effects of reasonable alternative courses of action, including courses of action not within the authority of the Department to adopt. The court stressed that the requirement of discussion of alternatives is subject to a construction of "reasonableness" and does not "impose unreasonable extremes."

San Antonio Conservation Society v. Texas Highway Department, 446 F.2d 1013, 2 ERC 1872, 1 ELR 20379 (5th Cir. 8/5/71). The court stayed construction of a highway through a park in San Antonio, on the basis of noncompliance with NEPA and other laws. The court held that the "segments" of the highway adjacent to the park must be considered together with the park "segment" in the application of these laws. It further held that, since the highway had been approved for Federal funding, the State could not defeat the application of the Federal laws by proceeding without Federal funds.

Scherr v. Volpe (CA 7) 4 ERC 1435 (8/18/72). Federal-aid highway project to convert 12-mile two-lane conventional highway into four-lane freeway that would require right of way acquisition and that would threaten animal habitat, aesthetic values, and air and water quality of forest and lake area constitutes major federal action significantly affecting quality of human environment under National Environmental Policy Act. State officials' reports considering proposed federal-aid highway's environmental effects that were not made public, that were not prepared in consultation with federal officials, and that were not indicative of evaluation process required by National Environmental Policy Act do not satisfy its environmental impact statement requirement. Federal-aid highway project that did not receive final federal approval and whose construction did not begin until after effective date of National Environmental Policy Act is subject to Act even though project's planning process originated before Act's effective date.

West Virginia Highlands Conservancy v. Island Creek Coal Co., 441 F.2d 232, 2 ERC 1422, 1 ELR 20160 (4th Cir. 4/6/71). The court upheld the standing of a citizen group under NEPA and the Wildnerness Act to challenge the Forest Service's permission of private timber cutting and road construction in Monongahela National Forest. The citizen group charged that a 102 statement should have been prepared, and that the area was protected by the Wilderness Act until studied for wilderness character. Without deciding these claims, the court found them sufficiently strong to justify a preliminary injunction pending further proceedings in the district court.

Wilderness Society v. Morton, 4 ERC 1101 (D.C. Cir. 5/11/72). The court of appeals, reversing a district court, permitted intervention by a Canadian environmental group in this suit testing the Secretary of Interior's compliance with NEPA in connection with the Trans-Alaska pipeline.

Zabel v. Tabb, 430 F.2d 199, 1 ERC 1449, 1 ELR 20023 (5th Cir. 7/16/70), cert. denied, 401 U.S. 910 (2/22/71). The court held that the Army Corps of Engineers has authority to deny a dredge-and-fill permit under 33 U.S.C. 403 on ecological grounds, basing its holding in part on NEPA.

UNITED STATES DISTRICT COURTS

Berkson v. Morton, 3 ERC 1121 (D. Md. 10/1/71). The court issued a 10-day temporary restraining order against construction in the C&O Canal National Historic Park without compliance with NEPA and other Federal statutes. This order has subsequently been extended.

Brooks v. Volpe (DC W Wash) 4 ERC 1532 (9/29/72). Submission of environmental impact statement that relies solely on general, nondetailed observations unsupported by factual data showing proposed federal-aid highway's environmental effect, and failure of state and federal agencies to give adequate public notice of statement's existence violate requirements of National Environmental Policy Act. Showing by state and federal highway officials that they have made good faith effort to comply with National Environmental Policy Act and Department of Transportation Act of 1966, that work on three highway contracts already let is from 31 to 95 percent complete, that enjoining further work on all contracts already let would not prevent environmental damage but would cause erosion and other harmful effects, and that severe public injury in form of loss of money and jobs would result from work stoppage warrants denial of injunction barring further work on contract's already let, even though project's environmental impact statement was inadequate; officials, however, may not enter into any new contracts for project until they have fully complied with statutes.

Committee to Stop Route 7 v. Volpe (DC Conn) 4 ERC 1329 (7/28/72). Federal officials' failure to prepare environmental impact statement regarding construction of federal-aid highway for which final design approval was not obtained until after effective date of National Environmental Policy Act entitles residents of affected area to injunction barring construction. National Environmental Policy Act requires impact statements to reflect agency consideration of all possible alternatives to federal-aid highway, including whether to construction highway at all, and requirement is not satisfied by impact statements issued separately for each individual project segment of proposed highway.

Conservation Council v. Froehlke, 340 F. Supp. 222, 3 ERC 1687, 2 ELR 20155 (M.D.N.C. 2/14/72). The court denied a preliminary injunction against the Corps of Engineers' construction of the New Hope Dam in North Carolina. The court found the 102 statement prepared by the Corps to have met the burden of full disclosure because, among other things, it included the depositions of plaintiffs' expert witnesses. The court found that failure of the statement to consider the effects of two future nuclear power plants and a proposed interstate highway was not fatal because the planning for these projects began after the planning for the dam was underway. The court held that, although the evidence in the case cast doubt on the wisdom of the project, NEPA did not authorize the court to decide that question. (Affirmed, 4 ERC 1044 (4th Cir. 5/2/72)).

Conservation Society v. Volpe, 4 ERC 1226 (D. Vt. 6/2/72). In a suit challenging Federal funding for segments of U.S. Route 7 in southern Vermont, the court held that NEPA is applicable to ongoing projects that were not past the "crucial stage" before January 1, 1970. Relying on the CEQ guidelines, the court held that 102 statements are required for segments of Route 7 for which bids had not been invited when NEPA became effective, even though DOT had given design approval before that date. The court granted a permanent injunction against work on those segments until statements are prepared. It held that 102 statements are not required for segments that were already out for bids on January 1, 1970.

Daly v. Volpe, 326 F. Supp. 868, 2 ERC 1506, 1 ELR 20242 (E.D. Wash. 4/9/71). Local residents sought an injunction against construction of an interstate highway segment near North Bend, Washington, asserting that the Department of Transportation had not complied with the requirements of NEPA. The segment, on which planning and hearings had begun before enactment of NEPA, was approved on November 30, 1970. At that time a draft environmental statement had been prepared, but agency comments were not received or a final statement prepared until after the approval. The court held that the Department of Transportation had substantially complied with NEPA in approving the segment, since the plans had been coordinated with many groups before approval, and agency procedures for formal circulation of draft environmental statements were still being developed.

Environmental Defense Fund v. Corps of Engineers, 325 F. Supp. 749, 2 ERC 1260, 1 ELR 20130 (E.D. Ark. 2/19/71), 4 ERC 1097. (E.D. Ark. 5/5/72). Plaintiff environmental groups sued to enjoin further construction of the Gillham Dam, on which the Corps has prepared an environmental statement under section 102(2)(C). The court upheld plaintiffs' standing and held that NEPA was applicable even though the project was partially constructed prior to January 1, 1970. On the merits, the court rejected plaintiffs' argument that section 101 creates an enforceable duty not to undertake environmentally damaging projects. However, it found the environmental statement legally inadequate and enjoined further construction until the Corps has complied with sections 102(2)(A), (B), (C), (D) of NEPA. In a later opinion, the court vacated the injunction because an amended 102 statement submitted by the Corps of Engineers met the full disclosure requirements of NEPA. The court found that although the amended 102 statement was not as fair and impartial and objective as if it had been compiled by a disinterested third person, it did present a record upon which a decision-maker could arrive at an informed decision.

Environmental Defense Fund v. Corps of Engineers, 324 F. Supp. 878, 2 ERC 1173, 1797, 1 ELR 20079, 20366 (D. D.C. 1/27/71, 7/27/71). The court granted a preliminary injunction against further construction of the Cross-Florida Barge Canal. The court held that a 102 statement was required for further actions even though the project was begun before January 1, 1970. The case was later consolidated with others involving the canal and transferred to M.D. Fla. for pretrial proceedings.

Environmental Defense Fund v. Corps of Engineers, 331 F. Supp. 925, 3 ERC 1085, 1 ELR 20466 (D. D.C. 9/21/71). The court granted a preliminary injunction against construction of the Tennessee-Tombigbee Waterway. It ruled that the plaintiffs had made a sufficient showing of noncompliance with NEPA to warrant an injunction pending trial. The case has since been transferred to the N.D. Mississippi, without opinion.

Environmental Defense Fund v. Hardin, 325 F. Supp. 1401, 2 ERC 1424, 1 ELR 20207 (D.C. 4/14/71). The court ruled that the Department of Agriculture's fire ant control program, involving dissemination of the pesticide Mirex, was a major action requiring an environmental statement under Section 102(2)(C) of NEPA. However, it refused a preliminary injunction against the program, on the ground that the Department had performed adequate studies of the program's environmental effects and had prepared an environmental statement discussing those effects in sufficient detail to satisfy all procedural requirements of Section 102(2)(C).

Environmental Defense Fund v. TVA, 339 F. Supp. 806, 3 ERC 1553, 2 ELR 20044 (E.D. Tenn. 1/11/72). The court granted a preliminary injunction against further work on the Tellico Dam project, because TVA had not yet filed a final 102 statement. TVA had filed a draft statement, but claimed that a statement was not required since construction had begun prior to enactment of NEPA. The court held that a statement was required because major portions of the construction remained and TVA was continuing to seek annual appropriations for the project.

Goose Hollow Foothills League v. Romney, 334 F. Supp. 877, 3 ERC 1087, 1 ELR 20492 (D. Ore. 9/9/71). The court enjoined construction of a Federally assisted college high-rise housing project for failure to prepare a 102 statement. However, the court stayed its injunction for 90 days to permit the filing of the statement. The injunction was made effective on 12/8/71, 3 ERC 1457.

Harrisburg Coalition Against Ruining the Environment v. Volpe, 330 F.Supp. 918, 2 ERC 1671, 1 ELR 20237 (M.D. Pa. 5/12/71). In a suit to enjoin construction of Interstate 81 through a park, the court found that the Secretary of Transportation had not made the findings required by Section 4(f) of the DOT Act. The case was remanded for new findings by the Secretary and for preparation of a 102 statement in accordance with the CEQ guidelines.

Izaak Walton League v. Schlesinger, 337 F.Supp. 287, 3 ERC 1453, 2 ELR 20039 (D. D.C. 12/17/71). The court granted a preliminary injunction against the AEC's issuance of a partial operating license for the Quad Cities nuclear reactor pending completion of the NEPA review of the application for a full operating license. The court held that the partial license was itself a major action requiring a 102 statement. However, the court refused to consider the plaintiffs' claim that the AEC should have prepared a 102 statement on its rules implementing NEPA, holding that that question could be reviewed only in a U.S. court of appeals. The AEC appealed the decision. The appeal has been mooted by an out of court settlement between the plaintiffs and the applicant.

Izaak Walton League v. St. Clair, 313 F.Supp. 1312, 1 ERC 1401 (D. Minn. 6/1/70). The court denied the Government's motion to dismiss a suit brought to invalidate private mineral claims in the Boundary Waters Canoe Area (a Wilderness Area). The court upheld the plaintiff's standing to sue and ruled that the suit was not barred by sovereign immunity.

Kalur v. Resor, 335 F.Supp. 1, 3 ERC 1458, 1 ELR 20637 (D. D.C. 12/21/71). In an action to review the Corps of Engineers' regulations governing the Refuse Act permit program, the court found the regulations invalid in two respects: (1) the regulations permitted the issuance of permits for discharges into non-navigable waters; and (2) they failed to require 102 statements for the issuance of permits. The court enjoined further issuance of permits under the program. The decision has been appealed.

LaRaza Unida v. Volpe, 337 F.Supp. 221, 3 ERC 1306, 1 ELR 20542 (N.D. Cal. 11/8/71). The court granted a preliminary injunction against construction or property acquisition for a Federally assisted highway in Alameda County. The court based its order on violations of other Federal statutes, leaving a claimed violation of NEPA for consideration at trial.

Lathan v. Volpe (DC Wash) 4 ERC 1487 (9/15/72). National Environmental Policy Act is not satisfied by state transportation agency's environmental impact statement that neglects to consider proposed federal-aid highway's effects on land use and population distribution in surrounding metropolitan area, that inadequately discusses proposed highway's effect on congestion on other roads, that inadequately discusses extent of damage that will occur to homes located above tunnels dug for highway, that fails to compare in detail costs and benefits of alternatives to highway, that fails to identify method of containing possible oil spills on floating bridge section of highway, that contains no scientific data to reinforce its conclusions on noise pollution, and that inadequately describes effects of air pollution on residents of highway corridor. Department of Transportation's statement issued under Section 4(f) of Department of Transportation Act of 1966 that employs deficient environmental impact statement as basis for approving use of local park land for federal-aid highway does not satisfy requirements of Act.

Minnesota Citizens Association v. AEC (DC Minn) 4 ERC 1876 (1/19/73). Atomic Energy Commission's issuance of operating permits for two Minnesota nuclear generating plants requires preparation of National Environmental Policy Act environmental impact statements even though construction permits were issued and construction began before effective date of Act.

Morningside-Lenox Park Assn. v. Volpe, 334 F. Supp. 132, 3 ERC 1327, 1 ELR 20629 (N.D. Ga. 11/12/71). The court preliminarily enjoined further work on Interstate 485 in Atlanta, holding that a 102 statement was required for further actions even though location approval was given before January 1, 1970.

National Forest Preservation Group v. Volpe (DC Mont) 4 ERC 1836 (1/5/73). Federal Highway Administration's review and approval of federal-aid highway's National Environmental Policy Act environmental impact statement that was initially prepared by state highway agency does not violate Act.

National Helium Corp. v. Morton, 326 F.Supp. 151, 2 ERC 1372, 1 ELR 20157 (D. Kan. 3/27/71). The court held that the Secretary of the Interior's cancellation of contracts for Federal purchase of helium constituted a "major action" requiring an environmental impact statement under Section 102(2)(C) of NEPA, and that the contractor had standing to seek compliance with this requirement. The court issued a preliminary injunction against termination of the contracts until the Secretary complied with NEPA. The injunction was subsequently affirmed by the 10th Circuit.

Natural Resources Defense Council v. Grant, 3 ERC 1883, 2 ELR 20185 (E.D. N.C. 3/15/72). The court preliminarily enjoined the Soil Conservation Service from taking any further steps to authorize, finance, or commence construction or installation of the Chicod Creek Watershed Project until a 102 statement is filed. Despite the fact that the project received congressional approval in 1966, NEPA is applicable because the project is an ongoing Federal project on which substantial actions remain to be taken. In balancing the equities for and against injunctive relief, the court noted that the cost of preparing the 102 statement is minute in comparison to the environmental benefits that will result from it.

Natural Resources Defense Council v. Morton, 337 F.Supp. 165, 167, 3 ERC 1473, 2 ELR 20028 (D. D.C. 12/16/71, 12/17/71). The court preliminarily enjoined a proposed sale of leases for oil and gas extraction on the Outer Continental Shelf off eastern Louisiana. The court held that a substantial question had been raised about the legal sufficiency of Interior's 102 statement, particularly in the scope of alternative actions discussed. The decision was affirmed on appeal.

Natural Resources Defense Council v. Morton, 337 F.Supp. 170, 3 ERC 1623, 2 ELR 20071 (D. D.C. 2/1/72). The court was asked to dissolve its preliminary injunction against a proposed sale of leases on the Outer Continental Shelf, on the basis of an addendum to the Interior Department's 102 statement supplementing the discussion of alternative courses of action in the original statement. The court held that the statement as supplemented did not comply with Section 102(2)(C), because the addendum had not been circulated to other agencies for additional comment.

New York City v. United States, 337 F.Supp. 150, 3 ERC 1570 (E.D. N.Y. 1/20/72). A three-judge district court disapproved an ICC order authorizing a railroad to abandon unprofitable New York Harbor operations. The court held that a 102 statement was necessary, since abandonment would probably have adverse environmental impacts through an increase in the use of trucks. The case was remanded to the ICC for preparation of a statement.

Nolop v. Volpe, 333 F.Supp. 1364, 3 ERC 1338, 1 ELR 20617 (D. S.D. 11/11/71). The court upheld the standing of minor students at U.S.D. to sue as a class (through a guardian ad litem) to prevent construction through the campus of a Federally funded highway. It granted a preliminary injunction against further construction until a 102 statement is prepared.

Northside Tenants' Rights Coalition v. Volpe (DC EWis) 3 ERC 1376 (8/11/72). Evaluation of proposed federal-aid highway's environmental impact by state officials does not satisfy National Environmental Policy Act's environmental impact statement requirement, since NEPA's requirement must be fulfilled by federal agency, not recipient of federal aid.

Scherr v. Volpe, 336 F.Supp. 882, 886, 3 ERC 1586, 1588, 2 ELR 20068 (W.D. Wis. 12/7/71, 12/29/71). The court upheld the standing of the citizen plaintiffs to challenge the construction of U.S. 16 from Oconomowoc to Pewaukee, Wisconsin, on which the Department of Transportation had not prepared a 102 statement. The court granted a preliminary injunction against further development of the project. On the defendants' motion to suspend the injunction, the court held that an agency does not have discretion to determine whether a project requires a 102 statement. Rather, on a challenge, the court construes the standards "major action" and "significantly affecting" to environment, and applies them to the particular project. The court refused to suspend the injunction.

SCRAP v. U.S. (DC DC) 4 ERC 1312 (7/28/72). Federal court has jurisdiction in student group's suit for injunctive relief under National Environmental Policy Act to review Interstate Commerce Commission's order extending interim 2.5 percent freight surcharge, since NEPA confers authority to enjoin any federal action taken in violation of Act's procedural requirements, even if jurisdiction to review agency action is otherwise lacking. Interstate Commerce Commission's order permitting continued imposition until November 30, 1972, of 2.5 percent surcharge on all freight shipped by railroad constitutes major federal action that may have adverse environmental impact, and therefore necessitates submission under National Environmental Policy Act of environmental impact statement.

Sierra Club v. Hardin, 325 F.Supp. 99, 2 ERC 1385, 1 ELR 20161 (D. Alaska 3/25/71). The court upheld the standing of conservation groups to challenge the Forest Service's sale of timber in Tongass National Forest as violative of NEPA and other statutes. However, the court found that the Forest Service's reliance on the report of a panel of conservationists complied with NEPA "to the fullest extent possible" in view of the advanced stage of the transaction at the time of NEPA's passage. It found the claims under other statutes to be barred by laches. The decision has been appealed.

Sierra Club v. Laird, 1 ELR 20085 (D. Ariz. 6/23/70). Plaintiff conservation groups sued to enjoin the Corps of Engineers from proceeding with a channel-clearing project on the Gila River, which had been authorized prior to January 1, 1970. The court granted a preliminary injunction on the basis of the Corps' failure to comply with Section 102(2)(C), Executive Order 11514, and paragraph 11 of CEQ's Interim Guidelines. The decision has been appealed.

Sierra Club v. Mason (DC Conn) 4 ERC 1686 (11/17/72). Corps of Engineers' New Haven Harbor dredging project that was planned after effective date of National Environmental Policy Act requires preparation of environmental impact statement since it is major federal action significantly affecting the environment, even though aim of project is to properly maintain harbor that was constructed before Act's effective date.

Sierra Club v. Morton (DC N Cal) 4 ERC 1561 (10/8/72). Court of appeals' denial of environmental group's request for preliminary injunction barring development of commercial recreational facility in national forest does not prevent either environmental group or federal district court from proceeding with trial on merits of group's National Environmental Policy Act challenge to facility.

Sierra Club v. Sargent, 3 ERC 1905, 2 ELR 20131 (W.D. Wash. 3/16/71). The court held that the Army Corps of Engineers must prepare a 102 statement on a Refuse Act permit issued to Atlantic Richfield Co. The court noted that it was not ruling on the scope of consideration required of the Corps in preparing the statement.

Texas Committee v. Resor, 1 ELR 20466 (E.D. Tex. 6/29/71). The court granted a preliminary injunction against work on the Cooper Dam project until the Corps of Engineers prepared a 102 statement.

Texas Committee v. United States, 1 ERC 1303 (W.D. Tex 2/5/70), dismissed as moot, 430 F.2d 1315 (5th Cir. 8/25/70). The court granted a preliminary injunction to prevent Farmers Home Administration from financing a golf-course project that allegedly threatened important wildlife habitat. The project had been approved, but not commenced, before January 1, 1970. The basis for the injunction was that FHA had not considered the environmental impact as required by NEPA. The case was dismissed as moot when the golf course was located elsewhere.

United States v. Brookhaven, 2 ERC 1761, 1 ELR 20377 (E.D. N.Y. 7/2/71). The court granted a preliminary injunction against dredging by a municipality in navigable waters without a Corps of Engineers permit. It held that the Corps, which had issued a permit in 1967, was not required to grant a subsequent permit, since the law had changed with the passage of NEPA.

United States v. Joseph G. Moretti, Inc., 331 F.Supp. 151, 3 ERC 1052, 1 ELR 20443 (S.D. Fla. 9/2/71). The court issued an injunction against further private dredging in Florida Bay without a Corps of Engineers permit. The injunction also required restoration of the defendant's past damage to the bay. The court relied on NEPA to justify considering ecological damage.

United States v. 247.37 Acres, 3 ERC 1099, 1 ELR 20513 (S.D. Ohio 9/9/71), 3 ERC 1696, 2 ELR 20154 (S.D. Ohio 1/24/71). In a suit to condemn land for the Corps of Engineers' East Fork Reservoir project, the court refused to grant summary judgment for the Government. The court held that failure to comply with NEPA was a valid defense to the condemnation suit. In a later opinion, the court refused to lift its ban on condemnation of the land because the Government had not yet shown full compliance with NEPA. The court held that the filing of a 102 statement without showing that public notice was given and without showing whether or not it was commented on by CEQ was not sufficient to show full compliance with Section 102(2)(C).

Wilderness Society v. Hickel, 325 F.Supp. 422, 1 ERC 1335, 1 ELR 20042 (D. D.C. 4/28/70). In a suit by conservation groups, the court enjoined the issuance by the Secretary of the Interior of a permit for a road across Federal lands on the basis, among others, of the Secretary's failure to prepare a statement under section 102(2)(C) discussing the environmental impact of both the road and the related Trans-Alaska Pipeline.

Willamette Heights Neighborhood Assn. v. Volpe, 334 F.Supp. 990, 3 ERC 1520, 2 ELR 20043 (D. Ore. 12/3/71). The court held that a 102 statement was required for construction of a segment of Interstate 505 near Portland. Although the Department of Transportation had indicated "tacit approval" of the location of the segment in 1964, formal location approval was not requested until April 1969 and was not given until after the effective dates of NEPA and the revised DOT regulations (PPM 20-8) requiring location and design hearings. The court enjoined work on I-505 pending compliance with these provisions, but refused to enjoin completion of exit ramps approved prior to enactment of NEPA.

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